

CA NO. 04-99003

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

* * *

TERRY JESS DENNIS, by and
through KARLA BUTKO, as Next
Friend,

Petitioner-Appellant,

vs.

MICHAEL BUDGE, Warden, and
BRIAN SANDOVAL, Attorney
General of the State of Nevada,

Respondents-Appellees.

D.C. No. CV-S-04-0798-PMP-RJJ
(Nevada, Las Vegas)

**Appeal from the United States District Court
for the District of Nevada**

APPELLANT'S EXCERPTS OF RECORD

Volume VII of XI

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Code No. 4185

99 JUL 21 P2:07

AMY W. CLERK

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JANET J. BERRY, DISTRICT COURT JUDGE
THE HONORABLE MICHAEL CHERRY, DISTRICT COURT JUDGE
THE HONORABLE MICHAEL MEMEO, DISTRICT COURT JUDGE

-000-

STATE OF NEVADA,

Plaintiff,

-vs-

TERRY JESS DENNIS,

Defendant.

Case No. CR99-0611

Dept. No. 1

PENALTY HEARING

Volume II of II

Pages 65 - 116

JULY 20, 1999

RENO, NEVADA

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ER 1081

ORIGINAL 418

1 RENO, NEVADA, TUESDAY, JULY 20, 1999, 1:55 P.M.

2 -o0o-

3
4 JUDGE BERRY: We are back on the record in
5 State versus Dennis, CR99-0611. The record should reflect
6 we've stood in recess for approximately three hours to
7 afford the judges of the panel an opportunity to review
8 primarily the Defense exhibits and to reflect upon some of
9 the statements and comments made by the defendant during
10 Judge Cherry's excellent canvass of the defendant on his
11 right to allocution.

12 And the record should reflect that we have
13 reviewed the exhibits introduced by the Defense. And
14 there were a few questions that the Court had as it
15 relates to some of the information in here. And so we
16 thought we'd take a few moments to interpose those
17 questions before any arguments commenced.

18 MS. PUSICH: Certainly, Your Honor.

19 JUDGE BERRY: Any objection from the State or
20 Defense?

21 MR. GRECO: No, Your Honor.

22 MS. PUSICH: No, Your Honor.

23 JUDGE BERRY: And Mr. Dennis, we appreciate
24 your patience as we work through these. Some of these
25 questions may seem nonsensical to you, but we're, again,

1 trying to get a point of reference and make sure we're as
2 well informed as possible.

3 There is a reference in the VA records about
4 moving to White City or taking up residency in White City.
5 Do you know what that reference is about?

6 MS. PUSICH: I do not, Your Honor. Just a
7 minute.

8 (Discussion between Ms. Pusich and Mr. Dennis)

9 MS. PUSICH: Your Honor, apparently it's a
10 long-term inpatient treatment program in the state of
11 Oregon that would address both alcohol dependency issues
12 and psychiatric issues.

13 JUDGE BERRY: There were a couple of
14 references in the VA records, and that reference was
15 approximately two months before this offense occurred, the
16 murder in this case, and that was likewise in the records
17 where you had indicated to the VA medical providers that
18 you had picked up a girl, that you wanted to kill her; and
19 there was a reference that you perhaps should go there.
20 Was there any other discussion or did you refuse to go to
21 the long-term facility? Did they make a referral there
22 from the VA hospital?

23 THE DEFENDANT: They were going to, Your
24 Honor. But I couldn't get in right away. There was like
25 a long waiting list. So I just blew it off.

1 JUDGE BERRY: And then the records also
2 indicated that you had a suicide attempt while you were a
3 member of the United States Air Force in 1966, and that's
4 when they assigned you to a clerical position.

5 THE DEFENDANT: That's right.

6 JUDGE BERRY: So you were never in combat
7 when you were in the military; is that correct?

8 THE DEFENDANT: Not technically, no.

9 JUDGE BERRY: Were you assigned any platoons
10 or engage in any combat missions at all?

11 THE DEFENDANT: No. I was noncombat. I was
12 Air Force. I worked in the APO in Saigon. During Tet
13 (phonetic), we were about half-ass overran. So I don't
14 know if that's combat or not. I got shot at plenty. They
15 tore the place up pretty good. But other than any actual
16 combat, no.

17 JUDGE BERRY: It appears, Mr. Dennis, in
18 reviewing all of these medical records, that the post
19 traumatic stress disorder has really been primarily
20 associated with the child abuse, the physical, the verbal
21 and the sexual child abuse. And that's what I have read
22 throughout these records. Is that what your treatment
23 providers have indicated?

24 THE DEFENDANT: Yeah. It's only been lately
25 that some of this stuff is even -- that I've even

1 remembered it. And I don't know, I guess I could say it
2 started affecting me just the last, I don't know exactly
3 how many years ago, but the last -- maybe within the last
4 ten years or so.

5 JUDGE BERRY: The records also indicated that
6 you set fires as a child. But it indicated that you did
7 not engage in animal torture or animal abuse; is that
8 correct?

9 THE DEFENDANT: No, I didn't. I grew up on a
10 farm, kind of a gentleman's ranch. I love animals.

11 JUDGE BERRY: One of these reports indicated
12 approximately 12 suicide attempts; is that correct?

13 THE DEFENDANT: I don't know.

14 JUDGE BERRY: That was the August 12th --

15 THE DEFENDANT: I really don't know.

16 JUDGE BERRY: So you don't know where the
17 doctor may have gotten that information?

18 THE DEFENDANT: Probably got it from me. But
19 sitting here right now, I don't know. Maybe.

20 JUDGE BERRY: And also during the taped
21 interview with the officers, you indicated one of the
22 issues in this case that sort of precipitated your anger
23 and the ultimate murder was that the victim challenged you
24 and indicated that she felt you were too nice to kill
25 anyone. And you indicated that you had killed before, and

1 that sort of set you off. And yet there's nothing in the
2 records that we've reviewed that indicates who you have
3 killed in the past. And it doesn't appear to be
4 associated with the military background. Can you
5 enlighten the Court as to who the other victims were, the
6 other people? Was that associated with your military
7 background or previous criminal activity?

8 THE DEFENDANT: There wasn't anybody else.

9 JUDGE BERRY: Thank you, sir.

10 Judge Memeo, did you have any additional
11 questions regarding the documents we've received?

12 JUDGE MEMEO: I have no further questions.

13 JUDGE CHERRY: I just have one. It may sound
14 silly, but during the tape, when you were by yourself, you
15 were sitting in the interview room, and you looked in your
16 wallet. Looked like you had lost something, then looked
17 like you found it. You were very relieved. What was it
18 you were looking at in your wallet? Do you remember that
19 part of the interview?

20 THE DEFENDANT: I have no idea.

21 JUDGE CHERRY: It's like something comes to
22 your mind; you take your wallet out, you look at your
23 wallet, and it's like, oh, maybe someone had misplaced a
24 driver's license or something like that, but it seemed
25 like it was real important to you. All three of us were

1 curious as to what it was.

2 THE DEFENDANT: Me too. I have no clue.

3 JUDGE CHERRY: Thank you.

4 JUDGE BERRY: Mr. Dennis, based upon the --
5 we've had a little over three hours for you to think about
6 the discussions we had previously -- about your attorney's
7 comments and your right to put on additional evidence in
8 mitigation and to make a statement to the Court and call
9 any witnesses that you so desire. Have you changed your
10 position, and would you like to take the opportunity to
11 allow Defense counsel to present any additional
12 witnesses -- any witnesses at all or for you to take the
13 stand or present any mitigation on your own behalf?

14 THE DEFENDANT: No, ma'am. I really don't
15 think it's going to make any difference one way or the
16 other.

17 JUDGE BERRY: You're satisfied you've had
18 sufficient time to review those options with counsel?

19 THE DEFENDANT: Oh, yeah.

20 JUDGE BERRY: Ms. Pusich, anything else you
21 want to put on the record as it relates to your
22 explanation of your client's constitutional rights to put
23 on a defense and present mitigation?

24 MS. PUSICH: No, Your Honor. We will be
25 making argument in response to the State. But we have

1 nothing else to present to the Court at this time.

2 JUDGE CHERRY: Could I ask what is the basis
3 of your representation of Mr. Dennis? In other words,
4 you're still his attorney?

5 MS. PUSICH: Yes, Your Honor.

6 JUDGE CHERRY: He doesn't want you to
7 represent him. Why did you not withdraw?

8 MS. PUSICH: Your Honor, without revealing
9 anything that's confidential, I have never been given the
10 impression that he did not want my assistance, merely that
11 he and I disagreed on what that was.

12 JUDGE CHERRY: Why didn't you call any
13 medical people to talk about his psychiatric condition?

14 MS. PUSICH: Your Honor, in our discussions,
15 it was not his desire to have witnesses presented at this
16 hearing. However, he was willing to have me present the
17 evidence to the Court in the form that it's been
18 presented.

19 I recognize there are cases that say that I
20 can just walk all over his ideas and do it my way, but I
21 chose not to do that in this case.

22 JUDGE BERRY: Based upon the three-judge
23 panel's opportunity to visit with Mr. Dennis about these
24 issues -- and I echo Judge Cherry's comments as to Mr.
25 Greco and Ms. Pusich, and my colleagues from different

1 districts continue to be impressed at the high quality of
2 legal representation both for the Defense and for the
3 State and the excellent presentations and information
4 you've brought thus far -- I am persuaded that Mr. Dennis
5 has had a full and fair opportunity to make an informed
6 decision as to his constitutional right, both to present
7 mitigating evidence, to present witnesses and to present
8 and have a full and complete hearing on this matter.

9 He chooses not to do that after being fully
10 informed of his constitutional rights. The Court,
11 likewise, is satisfied that he understands his
12 constitutional right to allocution, and he chooses not to
13 make any additional statements to the Court. He has
14 certainly been most cooperative in answering our questions
15 and clarifying issues of concern after reading the
16 excellent documentation provided by the Defense.

17 Based upon those circumstances, the Court
18 finds that Mr. Dennis has made a knowing, voluntary waiver
19 of his right to present mitigators and witnesses and
20 additional evidence that he and his counsel deem
21 appropriate to assist in his defense, and that he has
22 knowingly and voluntarily waived his right to allocution
23 or to further allocution other than what he's already
24 provided to the Court. And the Court accepts Mr. Dennis'
25 decision with some sadness and reluctance, but it is

1 certainly his constitutional right to not provide all of
2 the evidence that I know Ms. Pusich would like to put on
3 had she been given that authorization from her client.

4 With that said, if there are no further
5 administrative matters from counsel, we will hear from Mr.
6 Greco closing argument.

7 MR. GRECO: May it please the Court, I'm
8 going to keep my comments relatively brief given the fact
9 that there's no jury here, but I just want to hit a few
10 highlights. And the order I want to go over those are
11 covering the aggravators first and then the issue of
12 whether or not the death penalty is the just or correct
13 decision in this case, assuming that the aggravators are
14 present and they're not outweighed by mitigators.

15 Very briefly, the State's alleged four
16 aggravators, and as to the second, third, fourth
17 aggravators alleged in the State's Notice of Intent, I
18 don't believe there's any issue at all as to whether or
19 not those aggravators have been proven. The only proof we
20 really need is the certified copy of convictions. We've
21 presented those. They show that the defendant was
22 represented by counsel, and he was convicted of felony
23 assault in 1979, felony assault in 1984, and felony arson
24 in 1984. So as to those aggravators, I don't think
25 there's much of an issue.

1 Now we presented the testimony as evidence of
2 character per 175.552, in addition to evidence of the
3 crimes themselves. But as to those aggravators, I think
4 the State has proven them beyond all doubt.

5 Now, in terms of the remaining aggravator, I
6 want to point out, and I read with interest counsel's
7 sentencing memorandum, but I want to remind the Court that
8 it's not just a necrophilia aggravator; that aggravator
9 reads that "the defendant subjects the victim to
10 nonconsensual sexual penetration immediately before,
11 during or immediately after." And I suspect that Ms.
12 Pusich is going to argue, as she did somewhat in her
13 memorandum, that from the Defense's perspective, it's not
14 entirely clear that the anal intercourse occurred after
15 death. At least from their perspective they argued that
16 the defendant's words left a little fudge room.

17 But from the State's perspective, we disagree
18 with that. We think he clearly did engage in anal
19 intercourse after death. But it doesn't matter; what he
20 clearly said is, to use his language, "I flipped her over.
21 I was having sex with her anally and she didn't like it."
22 He said that two or three times: "And she didn't like
23 it." And it's clear that even if it was slightly before
24 that this occurred, it immediately preceded the death.

25 Now, again, we disagree with the perception

1 of the Defense that it is not clearly established that it
2 occurred after death. And as I was -- after I heard that,
3 I went through the transcript. And I tabbed a few
4 sections where he's asked directly if that occurred or
5 not. And a few of those are as follows. I apologize for
6 the language, but these are his exact words.

7 JUDGE BERRY: Counsel, are you referring to
8 the transcript from the tape?

9 MR. GRECO: Yes, Your Honor.

10 JUDGE BERRY: Could you please give us a page
11 and line as you refer to that?

12 MR. GRECO: Certainly, Your Honor.

13 First reference to anal sex against her will
14 is at page 28 at the top.

15 "I flipped her over and I was -- I was --
16 (laughs) boning her in the ass. She didn't like that much
17 and, huh, she said I wasn't capable of killing anyone. So
18 I proved her wrong."

19 Next time he mentions this occurring against
20 her will is at page 49, at the top.

21 He said: "You're having -- you're doing her
22 from the back at that time?"

23 "ANSWER: Yeah. But she wasn't liking it.

24 (Laughs.)

25 "RAFAQAT: Never?

1 "Yeah.

2 "Okay.

3 "ANSWER: No, I flipped her over and she
4 wasn't going for it. Oh, well."

5 Another indication of that is at page 54,
6 towards the bottom.

7 "Did you do anything to the body after she
8 was dead?

9 "ANSWER: I may have.

10 "QUESTION: What might have you done?

11 "ANSWER: I might have finished up what I
12 started.

13 "QUESTION: Having sex with her?

14 "ANSWER: Yeah,

15 "QUESTION: When she was dead?

16 "I think so, I'm not sure."

17 Page 85, at the top. He's in the process of
18 describing strangling her on the preceding page, then he
19 says:

20 "While she was still struggling, I rolled her
21 over on her fucking stomach. I was aroused and
22 then fucked her in the ass."

23 My point being is, it's crystal clear from
24 both statements and numerous other similar statements that
25 the Court heard during the evidence that he was having

1 anal sex with her clearly against her will, and that's
2 exactly what he means when he says "she didn't like it."
3 And that's exactly what he means when he laughs. He's
4 laughing. He thinks it's funny, and he's putting an
5 exclamation point on those words "she didn't like it."

6 Now, from the State's perspective, there is
7 no significant mitigating evidence. Now I would note that
8 we canvassed the defendant in great detail about this
9 waiver of presentation of mitigating evidence. But of
10 course the Court has quite a bit of mitigating evidence in
11 front of it. Those records are extremely detailed. I did
12 not object to those because I wanted the Court to hear
13 them.

14 In response to some of the Court's questions,
15 particularly Judge Cherry, the Defense gave some answers
16 about his mental health history that might be deemed
17 mitigating. But I'll defer to Ms. Pusich. I want to hear
18 what she has to say on that so I'll have a chance to
19 respond. But from the State's perspective, we don't
20 believe there are any significant mitigators in this case.
21 Clearly, clearly any potential mitigators do not outweigh
22 the aggravators the State has proven.

23 Assuming that the Court agrees with me that
24 the aggravators are present and that the mitigators do not
25 outweigh the aggravators, then the second and the more

1 important inquiry is, is death appropriate in this case?

2 And I want to start off that section in my argument by
3 asking a question: And that is, if the defendant had
4 actively opposed the imposition of a death penalty in this
5 case, if the things that occurred earlier today and at the
6 plea hearing had not occurred, would this be a case
7 deserving of death? And from the State's perspective,
8 absolutely. This man is an absolute menace to every
9 person that he comes in contact with, especially every
10 female person.

11 First of all, consider his criminal history:
12 He's got four previous felony convictions; five previous
13 misdemeanor convictions. One of the misdemeanor
14 convictions was for battery. Three of the felony
15 convictions were for violence. You heard the specifics of
16 them. Lana Miller and Steve Foster talked to you about
17 the second assault and the arson. Fortunately, no one was
18 harmed in that arson, as you heard from the evidence.

19 But there's a reason why the penalties in
20 this country and this state are so severe for arson,
21 especially arson that involved setting on fire structures
22 that are lived in or attempting to set on fire those
23 structures. And that's because the risk of death, the
24 risk of harm to a lot of people is so high. When he threw
25 that -- it's not a Molotov cocktail, but it's the same

1 idea -- when he threw that gas can ignited with the rag
2 stuffed down it, the risk of dramatic harm or death was
3 great. It was very high, and something very nightmarish
4 could have happened. And we're fortunate something worse
5 didn't happen. As it was, part of the building was set on
6 fire; the grass was set on fire. The window was broken.
7 The windowpane was set on fire. Of course from those
8 circumstances you can factually infer that he was mad at
9 Lana Miller and so he was going to blow up her house.

10 But he doesn't stop there. The second event
11 there, it's a separate location, five minutes later,
12 separate victims entirely. It's really a separate act.
13 What happens there? The police are just trying to diffuse
14 the situation. He's threatening them. He lunges two
15 separate times. The second time he lunges right near
16 Officer Foster, causing this officer that's never had to
17 fire a gun to fire a gun, to shoot him, because he thought
18 he was going to seriously harm or kill his partner.

19 All he had to do was put the knife down. He
20 said he was making a point. What he really means is,
21 look, I don't have to respect your authority, government
22 officials. I don't have to do what you tell me; I'm going
23 to do whatever I want. I'm going to fire bomb somebody's
24 house, and I'm going to take a few stabs at you whether
25 you like it or not, because that's the type of individual

1 that Mr. Dennis is.

2 And you saw it again and again during the
3 interview, when, to use his words, he said repeatedly "I
4 don't give a fuck." And he doesn't. And that's why I say
5 this man is an absolute menace.

6 The Supreme Court has already said you can
7 consider future dangerousness, the future likelihood to
8 kill or seriously maim or injure, based upon the facts of
9 the instant murder alone. And of course we have a lot
10 more than that in this case.

11 So from the State's perspective, from a
12 deterrence point of view, a public safety point of view,
13 death is warranted so that we can stop this individual
14 from killing again. And you don't -- your chances of
15 killing don't just stop because you go to prison for 40
16 years or for the rest of your life. You can kill in
17 prison. And he should be prevented from doing that.

18 Now, from our perspective, this is a death
19 case also because of the level of premeditation and
20 deliberation, the calculation that went on in this case.

21 Now, the issue of guilt was not before the
22 Court, so the State in a very abbreviated presentation
23 simply presented the evidence that the State felt it
24 needed to to prove the aggravators and seek a sentence of
25 death. But even from that small portion of the case that

1 you all heard, we know this: He says he knew he was going
2 to kill her from the moment he met her. She looked right.
3 She looked pathetic. She looked helpless. He decided
4 right then that he was going to kill her. That was,
5 depending on which portion of the interview you rely upon,
6 at least a day and maybe a little longer, a day or two
7 before the point he killed her.

8 And I bring that up because, as all three
9 members of the Court are well aware, the vast majority of
10 murders that are first degree murder involve premeditation
11 or deliberation that lasts a minute or a couple of
12 seconds. We have that jury instruction -- and Ms. Pusich
13 knows because I've used it in so many cases -- that says
14 the premeditation can be as instantaneous as successive
15 thoughts of the mind; it need not be for a day, an hour or
16 even a minute. And my point is, when you compare this to
17 the majority of the murders the Court sees come through
18 the courthouse halls every month, this one is different
19 because he thought about it for so long.

20 Now he also mentioned in the interview that
21 he met this woman a little bit before this event. They
22 started to -- he started to engage her in an act of
23 bondage. She got scared, according to him, and she took
24 off. He was fantasizing killing her even earlier than
25 that. It was referenced in Your Honor's comments; it's

1 unclear if that's the same victim, but I'm just assuming
2 from the State's perspective, and for purposes of argument
3 we should assume it's just one, because we don't know to
4 the contrary. But the point being, it was one; he was
5 fantasizing about killing for some period of time. And
6 because he thought about it for so long, at least from our
7 perspective we think that makes it worse.

8 We also remember during the interview at page
9 60, after he talked about that bondage situation, he said,
10 "So I didn't get to finish." He didn't say what he meant
11 by that. But I think the Court can easily infer what he
12 meant by that. He meant I didn't get to finish what I
13 didn't finish with Ilona Straumanis, and that is, the
14 killing.

15 'Now, as the Court well knows from having
16 dealt with so many murders, a lot of times murders don't
17 involve a heck of a lot of motive or at least motive that
18 makes sense to normal thinking individuals. But in this
19 one, the motive is even -- it even involves less
20 provocation than the normal killings. I mean he's talking
21 to her. He's talking to her about having to kill people,
22 and she says, and you can all imagine her, after hearing
23 her saying that you're too nice to do that, he accepts it,
24 takes it as a challenge to his manhood; there's some
25 reference to the sustaining an erection, and he takes that

1 as a challenge. So he strangles her.

2 So, again, the State understands -- and I
3 know the Court is well aware -- that life is pretty cheap
4 out there. But in this case you can even say that it's
5 less valuable than normal.

6 From our perspective, it's a death case also
7 because this victim is totally helpless. You all saw a
8 picture of her. The defendant told you at various points
9 of the interview, pages 53: "She wasn't fighting too
10 hard. She was just making a lot of gagging noises. I've
11 got no scratches on me, no marks. I've got nothing."
12 That's because this victim was not a large woman, and she
13 was totally helpless and totally overpowered by this
14 individual who had this belt, this implement of death with
15 him. She never had a chance.

16 Now I started off by talking about from the
17 facts the danger that we believe this individual poses to
18 future persons if he does not receive the death penalty.
19 But apart from his acts, you have his own statement in
20 that regard. Page 59, at the bottom:

21 "I feel like if I didn't get stopped, this
22 would not be the last time. I would do something
23 like this because I found it exciting. I actually
24 enjoyed that."

25 Page 74, referring to killing our victim:

1 "If I hadn't had this one, this would not be the
2 last one. It was too easy. And it felt too good."

3 Again, in terms of future dangerousness,
4 killing or seriously maiming or injuring people in the
5 future, those statements should absolutely concern the
6 Court. And they are very good evidence of this
7 defendant's character pursuant to 175.552.

8 Now, of course another reason, although from
9 our perspective not the most important reason, but another
10 reason is the defendant made very, very clear from the
11 first moment of the interview that he wants the death
12 penalty. He told the detectives, "I'd rather have a
13 goddamned death penalty than 40 years in prison. I mean,
14 I've spent time in prison before and it's a drag."

15 And that brings up an important point. He
16 has spent time in prison before, several times, and it
17 hasn't done anything to curb his criminal behavior. So we
18 could do more of the same, send him to prison again, but
19 from our perspective that would not curb his tendencies to
20 kill or harm.

21 Now, I want to talk a little bit about mental
22 illness. And I suspect Ms. Pusich will talk about that at
23 great length, but I would remind the Court -- and I know
24 Judge Memeo made findings this morning in that regard --
25 this is not a low functioning individual. He's very

1 articulate. He's very intelligent. And although there
2 may be some indication of post-traumatic stress disorder
3 in his background based upon the events as a child, but
4 what we do know from the interview and records, he's not
5 hearing voices. He's not seeing spirits. He's not
6 psychotic. Although we certainly don't dispute that he's
7 had some form of mental illness. But the detectives, of
8 course, were concerned about that. There's breaks in the
9 interview where they leave the room. They're obviously
10 thinking about what they're going to do next. They come
11 back at one point in the middle at pages 46 through 50.
12 They go over and ask him questions about that. And to use
13 his words, he tells them he's a sociopath. He tells them
14 "I know the difference between right and wrong." He tells
15 them "I don't give a fuck about anybody." And he tells
16 them "I can kill somebody and not even care."

17 From the State's perspective, the defendant
18 is in control of his mental faculties. And from the
19 State's perspective, the Court deals with suspects every
20 single day charged with serious crimes, including murder,
21 and the Court can on its own compare this individual to
22 those defendants who come before this Court on a regular
23 basis. And I would submit to you that he's certainly not
24 lower functioning than the average defendant who walks in
25 the Court. If anything, he's higher functioning than the

1 average defendant that walks into the court.

2 Now, Ms. Pusich brings up this corpus delicti
3 issue in her brief. I thought about this. And rather
4 than waiting until my rebuttal, I want to talk about that
5 now so she or Mr. Petty, or whoever responds, can fully
6 respond to what I say.

7 Let's assume for a moment that you agree with
8 her position in her brief that the corpus delicti rule
9 applies to a sentencing, a penalty proceeding. Let's
10 assume you agree with that for a moment; the corpus
11 delicti rule does not require we present any quantum of
12 proof, by proof beyond a reasonable doubt, in addition to
13 the statements; it just requires the presentation of some
14 evidence. We don't have to negate all innocent
15 explanations, whether we present that corroborating
16 evidence. We, by law, simply have to present some
17 corroborating evidence in the statements.

18 I would suggest to you that the position of
19 the body, she's down on all fours. She's got this pillow
20 propped underneath her mid-section. The defendant told
21 you, you saw in the photos, her buttocks is raised and her
22 legs are spread into what the detective described as a 90
23 degree position. I don't know if it's quite 90 degrees,
24 but it's close. You also saw the body was unclothed.
25 Detective Bennett testified that there appeared to be

1 dried blood on the anus of the victim. Dr. Raven
2 testified that the victim's anus was dilated. We had the
3 bruising and hemorrhaging underneath it in the high thigh,
4 upper thigh, just below the buttocks, very near where the
5 alleged assault occurred.

6 So from the State's perspective, that is
7 sufficient. That is certainly some corroborating
8 evidence, and we don't believe that, even if the corpus
9 delicti rule applied in a sentencing hearing, the
10 Defense's contentions are correct.

11 But from our office's and from the DA's
12 Office's perspective, we don't believe the corpus delicti
13 rule applies to a sentencing or penalty proceeding. And I
14 say that for a couple of reasons: Number one, as the
15 Court's well aware, the corpus delicti rule deals with
16 this issue of criminal agency and proving the body of the
17 crime before some statements can come in. But that's
18 relevant at the guilt stage or at the preliminary hearing
19 stage. The underlying crime is murder. And if he had
20 pled not guilty, then the corpus delicti rule would apply
21 to the murder. But once you have pled guilty, the
22 criminal agency issue is gone; the body of the crime issue
23 is gone.

24 This is a penalty hearing only. And there
25 is, although the Nevada Supreme Court has not dealt with

1 the exact issue of whether the corpus delicti rule applies
2 at a death penalty hearing as to the aggravators, but they
3 have dealt with very closely related issues in Rainsberger
4 and Domingues. I'll hand the Court copies of those two
5 decisions.

6 May I approach?

7 JUDGE BERRY: Please.

8 MR. GRECO: There's three copies of
9 Rainsberger and there's two copies of Domingues.

10 In Rainsberger, in that case the defendant
11 pled guilty to murder, but they left open the issue of the
12 degree of murder. And as the opinion reflects, the court
13 received evidence on the limited issue of the degree of
14 murder. And then a corpus delicti challenge was raised.
15 And at the end of the opinion, which is headnote six and
16 seven, we'll start at the bottom of page five, the court
17 discusses that issue, and the court concludes that they're
18 not -- as to that issue of the degree of the murder, as
19 opposed to the underlying issue of guilt, the corpus
20 delicti rule does not apply.

21 Domingues is even more detailed. Now in
22 Domingues, on that issue, in that case the issue was does
23 the corpus delicti rule apply to a weapon's enhancement.
24 So in Domingues we're not even to a penalty phase, we're
25 simply at the weapons enhancement. In very detailed

1 language, which begins at the bottom of what is page 18 on
2 the Westlaw decision I've given you, they talk about
3 Domingues alleging that the corpus delicti rule does not
4 apply, or Domingues alleges that the State did not satisfy
5 the corpus delicti rule as it applied to the deadly weapon
6 enhancement. And the court, in some language in the
7 middle of 19, states as follows:

8 "We disagree with Domingues's argument
9 because the corpus delicti rule is inapplicable to
10 a deadly weapon sentencing enhancement. The
11 purpose of the corpus delicti rule is to establish
12 if an injury or crime in fact occurred. A
13 sentencing enhancement is merely an additional
14 penalty for the primary offense."

15 The court then goes on to cite a statute that
16 says the enhancement does not create a separate offense.

17 Then just below that:

18 "The corpus delicti rule asks a more
19 fundamental question: Did a death occur and was it
20 by means of criminal agency? According to Wigmore:

21 "The meaning of the phrase "corpus delicti"
22 has been the subject of much loose judicial
23 comment, and an apparent sanction has often
24 been given to an unjustifiably broad meaning. It
25 is clear that an analysis of every crime, with

1 reference to this element of it, reveals component
2 parts, first, the occurrence of the specific injury
3 or loss (as, in homicide, a person deceased;
4 in arson, a house burnt; in larceny, property
5 missing; second, somebody's criminality (in
6 contrast, e.g., to accident) as the source of the
7 loss -- these two together involving the commission
8 of a crime by somebody.

9 "The aim of the corpus delicti rule is to
10 protect against an accused's conviction based
11 solely upon an uncorroborated confession. Corpus
12 delicti requires the prosecutor to show, for
13 example, the person died as a result of murder,
14 rather than as a result of accident, suicide or
15 natural causes. Whether the murder or another
16 crime, such as robbery, was carried out with the
17 use of a deadly weapon is irrelevant to the
18 establishment of corpus delicti. Accordingly, we
19 conclude that Domingues's contention lacks merit."

20 The point being, the corpus delicti applies
21 to the body of the crime, the criminal agency. We believe
22 that agency is moot the moment he pled guilty. But even
23 if the Court disagrees with that position and agrees with
24 Defense counsel's position, because of the facts I
25 mentioned earlier, we think there was clearly some

1 corroborating evidence presented anyway.

2 Before sitting down again, there's no jury
3 here, and that fortunately, or unfortunately, will keep my
4 comments short. I just wanted to remind the Court that
5 there is a victim in this case as well. And although it
6 is not our primary motivator in seeking the death penalty,
7 sentencing this defendant to the same sentence that he
8 sentenced this woman to, we believe, equals justice.

9 MS. PUSICH: Objection, Your Honor. The
10 State cannot make Golden Rule arguments to a jury or
11 anyone else.

12 JUDGE BERRY: Do you wish to respond to the
13 objection?

14 MR. GRECO: I'll rephrase that, Your Honor.
15 I think the danger is less without a jury present, but I
16 will rephrase that. I'll withdraw what I said.

17 JUDGE BERRY: I'll sustain the objection.
18 Strike the last comment from the record. This Court will
19 disregard any comment as it relates to any Golden Rule
20 argument or same sentence argument from any consideration
21 that it might make.

22 You may proceed.

23 MR. GRECO: In following up on that, let's
24 just rely on what he said in the interview. He said the
25 moment I met her I knew I was going to kill her. He

1 became an executioner, in effect, from the moment that he
2 met her. And for that reason we think that is one
3 additional reason I should say as to why we believe he
4 deserves a sentence of death. This individual simply
5 poses too high of a danger. His future dangerousness is
6 too great, simply based on his criminal history and the
7 acts in this offense and we believe that in this case
8 justice equals death.

9 JUDGE BERRY: Thank you.

10 Ms. Pusich.

11 MS. PUSICH: Thank you, Your Honor.

12 May it please the Court, Terry Dennis does
13 not deserve to die. Under contemporary standards of
14 decency, death is viewed as an inappropriate punishment
15 for a substantial portion of convicted first degree
16 murderers. The United States Supreme Court made that
17 statement in 1976 in Woodson versus North Carolina.

18 Terry Dennis is a mentally ill person and he
19 has been for years. He's been trying to hurt himself or
20 kill himself for decades. And he still is today. He
21 asked each of the Mount Lake Terrace police officers who
22 surrounded him in 1983, are you the one who is going to
23 shoot me? And he is still asking that question.

24 His medical records disclose that Terry
25 Dennis has been admitted at times when crying and upset

1 and at other times when polite and cooperative. Not every
2 mentally ill person presents as a raving maniac. And
3 sometimes people who do present that way don't present
4 that way all the time.

5 Just as an alcoholic can be functional, a
6 mentally ill person may at times be functional. And the
7 fact that he can be pleasant and polite and articulate
8 doesn't mean that he's completely healthy.

9 Additionally, intelligence is no shield
10 against mental illness. Being smart doesn't guarantee
11 that you will be mentally healthy. And Mr. Dennis is a
12 fine example of that.

13 He was born to an alcoholic mother who was
14 dying of tuberculosis 52 years ago. And within a year she
15 had died. He never knew his father. He was adopted,
16 which can be a wonderful experience. But for Terry Dennis
17 it was a nightmare. His adoptive family sexually and
18 physically abused him. He was abused at the hands of both
19 his mother and an uncle. And while they put food on the
20 table, clothes on his back, it would be a generous
21 overstatement to suggest that they raised him or provided
22 him with a good example.

23 After completing high school, Mr. Dennis
24 joined the United States Air Force in 1965 and served
25 almost four years. He received an honorable discharge.

1 And prior to his discharge he had been hospitalized for
2 attempting suicide. In 1970 he was convicted of
3 possession of marijuana. He spent two years in the South
4 Dakota penitentiary for a crime, which, if committed in
5 Washoe County today, involving a youthful first offender,
6 would probably result in a misdemeanor and a fine.

7 He was released in 1972 and remained out of
8 trouble with the law for seven years. He was then
9 convicted of second degree assault for attacking his
10 girlfriend and cutting her with a knife. She expressed
11 concern that he would come after her again if he were
12 released. Yet, unbeknownst to her, he was released. He
13 was granted probation, and she has never seen him again.

14 In 1983, Mr. Dennis was convicted of second
15 degree arson and another second degree assault. He threw
16 a lighted can of gasoline against a house where his
17 girlfriend's teenage daughter was staying with a
18 45-year-old man. The records from the Nevada Mental
19 Health Institute show that at the time he committed that
20 offense he believed that Mr. Rassmussen had impregnated
21 the 15-year-old girl.

22 Mr. Dennis was shot by the police who were
23 trying to arrest him for that offense. He was also bitten
24 by the police dog on the scene after police knew he had
25 dropped his five-inch knife. At least five officers

1 surrounded him with firearms, yet he goaded them, urging
2 them to shoot him. And they did. No one but Terry Dennis
3 was injured. And the officer who shot him, relying upon
4 his experience in a community college class five years
5 earlier, concluded that Mr. Dennis was not crazy. Mr.
6 Dennis managed to serve a ten-plus-ten-year sentence in
7 the State of Washington in 30 months. That gives you some
8 indication of his ability to survive and produce while in
9 custody. Since that time he has suffered no further
10 felony convictions until his arrest in this case.

11 The defendant's character, prior criminal
12 history, mental capacity, background and age are just a
13 few of the many factors, in addition to future
14 dangerousness, that a jury may consider in affixing an
15 appropriate judgment. The United States Supreme Court
16 said that in the Simmons versus North Carolina in 1994.

17 The State raised an interesting point:
18 Although many of his misdemeanor convictions revolve
19 around theft and alcohol, it's true that it appears that
20 the group of people that he may present a future danger to
21 in certain circumstances do appear to be women. And
22 interestingly, in Simmons versus South Carolina, which is
23 the Supreme Court's future dangerousness case, one of the
24 arguments the Court accepted in mitigation was the fact
25 that the defendant, if incarcerated in the state of South

1 Carolina, and the same is true in the state of Nevada,
2 would have no access to the population that was most at
3 risk by his freedom like South Carolina. The state of
4 Nevada segregates the male and female offenders, and
5 there's no indication that Mr. Dennis has ever been a
6 threat to staff members or other inmates while
7 incarcerated.

8 Mr. Dennis is a future danger to himself.
9 He's a present danger to himself. But there's no evidence
10 that he's a danger to others while incarcerated.

11 There were some things presented to the Court
12 in the evidence that I think need particular attention.
13 First, as noted in my argument, the State alleged, and Mr.
14 Dennis pled guilty to the use of a deadly weapon. And
15 there was some allegation by the police that he had
16 intended the belt to be a weapon and nothing else. But we
17 know from his interview with police, and it was said to
18 the Court yesterday when listening to the video, he in
19 fact had been using the belt as a belt, although it didn't
20 have a buckle. In fact, it was the only belt found in
21 association with Mr. Dennis or the room. It was a weapon
22 of opportunity, not premeditation.

23 The second thing the Court should consider is
24 his statement to the dispatcher when she's asking if he
25 has weapons. He repeatedly tells people that he does not

1 have weapons, because he doesn't think of the belt in that
2 manner until after it's brought to his attention and he's
3 charged with it. He also tells Robin Carothers at the end
4 of the tape, "Darlin', I'm turning myself in. I'm not
5 going to hurt anyone else."

6 Detective Burke told us the information Mr.
7 Dennis gave to police was accurate. When his
8 investigation took him to other sources of information, he
9 found that what Mr. Dennis had told the police was right.

10 The reason that's important is that it shows
11 that Mr. Dennis was not hiding details. When he told the
12 police that he could not definitively say whether or not
13 he had anal intercourse with Ms. Straumanis, it was not a
14 joke or a game; he didn't remember.

15 Detective Burke verifies the defendant
16 smelled strongly of alcohol when he first met him. And
17 from the witnesses that told you about his prior
18 convictions for violence, alcohol was involved in those as
19 well.

20 Detective Burke also agreed that at least
21 four hours elapsed between the time that Mr. Dennis was
22 first contacted and when his blood alcohol level was
23 tested. The presentence report shows you when his blood
24 alcohol level was tested it was a .112. They did three
25 graduated draws, and it was descending. As the detective

1 noted, he had not been given an opportunity to drink
2 anything alcoholic once the police came in contact with
3 him.

4 Perhaps the most important thing from the
5 State's presentation of evidence is you see that the
6 interview shows that fully a third of the time that the
7 defendant was videotaped he was talking to himself. Some
8 of the time he made offhand comments; sometimes he
9 appeared to have regular conversations.

10 You'll see in the Veterans Administration
11 medical record's admission for January 7th, 1999, one of
12 the symptoms that the clinical social worker noted was
13 that the defendant was exhibiting bizarre behavior because
14 he was talking to himself. I would ask the Court, if in
15 January 1999, because the defendant was suicidal,
16 homicidal in talking to himself he was eligible for
17 admission to a psychiatric hospital, how does it differ if
18 in March he's homicidal, suicidal and talking to himself?

19 I would submit to the Court that the State
20 has not shown that Terry Dennis poses a future danger if
21 he's incarcerated. As I noted in my paperwork, every
22 sentence available to this Court from what the law views
23 as the most lenient to the most severe will result in his
24 death in custody. It's really just a question of when and
25 how. Even if the Court were to grant him a possibility of

1 parole, his age and his health are not going to result in
2 his ever being released.

3 Finally, I'd like to address a few of the
4 points that were raised by the State's argument. The
5 State alleges that it has in fact proven aggravators two,
6 three and four. And while I don't dispute they have
7 certified copies of prior convictions, the issue is, are
8 those sufficiently recent to be relevant to a
9 determination whether this man should live or die? And I
10 would respectfully submit that under both Chambers and
11 Hanes, the new Nevada Supreme Court said they're not.

12 Regarding aggravator one, I do dispute that
13 the Nevada Legislature in 1997 added language to take that
14 aggravator from being something that could only be
15 committed during life and including something that could
16 be during life or after death. That was in response to a
17 case where the Supreme Court had declined to find it where
18 there was no clear evidence that the penetration had
19 preceded death.

20 However, I don't believe even with that
21 position that the evidence presented by the State shows
22 that Mr. Dennis penetrated Ms. Straumanis anally. The
23 only evidence that we have regarding actual consummated
24 sexual conduct is several days of consensual sexual
25 conduct. He told the police that there was a phone in the

1 room. That appears to be true, because he called them
2 from it to report that this crime had occurred. He told
3 the police that he had left several times to get meals.
4 He had left to get more alcohol. Certainly she had an
5 opportunity to leave had she wanted to do so.

6 The State made a statement that I agree with
7 wholeheartedly. He said you've been presented with quite
8 a bit of mitigating evidence. He then said that this
9 defendant is an absolute menace to women. This defendant
10 is an absolute menace to himself. The State suggests he
11 hasn't respected anybody. The evidence shows that he
12 respected his military supervisors. He respected the
13 authorities in Washington who had him incarcerated for two
14 and a half years. And he's respected the jail authorities
15 at the Washoe County detention facility. The State also
16 talked about successive thoughts of the mind. And because
17 we have no jury to be instructed here, I didn't submit my
18 normal five page objection to that, but I don't think that
19 it's appropriate in any case and I would ask the Court not
20 consider it here.

21 The State suggests that there was not a
22 motive. I think that that's right. The murder in this
23 case was not the result of a motive, it was a response to
24 triggering of mental illness.

25 The word "challenge" has been used quite a

1 bit. If you will recall, review the interview, you'll
2 find that the word is not Mr. Dennis' but Detective
3 Rafaqat's, when he suggests that's a good way to describe
4 it. Mr. Dennis acquiesces in that.

5 The State also made a comment that life is
6 pretty cheap. I disagree with that. And I hope this
7 Court disagrees with that. Certainly it is tragic that
8 Ms. Straumanis died. It's more tragic that she died in
9 the manner in which she did. But as the Supreme Court
10 said in 1976, not even a large portion of first degree
11 murderers deserve to die.

12 Finally, Your Honor, under what has to be
13 taken as the argument of the inmates running the
14 institution, the State seems to suggest that we should now
15 let the defendants decide what their sentence should be.
16 Normally I would think that was a wonderful idea, but I
17 don't think that's really what they want to start here
18 this afternoon.

19 The State also indicates that when the
20 defendant was interviewed by the police, he denied having
21 audio and visual hallucinations, which he has had in the
22 past. That's not what it shows. What they asked him,
23 which I think has to fall under the category of a
24 denigrating mental illness, is whether or not little green
25 martians told him to do this. And he says no. But they

1 don't ask him if he's having hallucinations. They don't
2 ask him if he's had them before. He asked him if little
3 green martians are making him do this. And of course his
4 response is no.

5 I would agree with the State that Mr. Dennis
6 is a higher functioning individual. However, I think
7 that's a relative term. Certainly he's capable at times
8 of knowing who he is, what he's doing, where he's going.
9 That doesn't mean he's a healthy person. Nevada law right
10 now recognizes two mental health concepts. Competency,
11 which is an extremely low threshold, and insanity, which
12 isn't quite as low but only gets you a bed in a psych ward
13 in the Nevada Department of Prisons.

14 What we don't recognize as defenses or
15 depriving the court of jurisdiction, but nonetheless are
16 important in evaluating the defendant's blame in this, are
17 what might be known as temporary insanity or diminished
18 capacity. I would respectfully submit that in the
19 jurisdictions where those terms are recognized, this
20 defendant would in fact be someone who operates under a
21 diminished capacity.

22 Finally, Your Honor, regarding the State's
23 arguments on corpus delicti -- I gave one of the judges my
24 Rainsberger case the State had provided -- however, one of
25 the more important things to come from that case is the

1 fact that it predates both Furman and Gregg; all Nevada
2 cases that had resulted in capital sentences prior to
3 those opinions were in fact commuted as a result of those
4 opinions.

5 I am familiar with Domingues. In Domingues
6 they found that corpus delicti was not necessary where
7 they were seeking an additional penalty enhancement.
8 However, in a capital case, an aggravator is a fundamental
9 prerequisite to this Court even having authority to
10 address whether a person is eligible for a death sentence.
11 It's not merely a penalty enhancement as an age
12 enhancement would be or a deadly weapon enhancement would
13 be.

14 The information provided by the Court
15 independent of Mr. Dennis' statements, and interestingly,
16 the majority of the State's argument focused on Mr.
17 Dennis' statement, is from the pathologist that there is
18 no injury to the anus. There is no perianal trauma. She
19 testified regarding that and it's in her report. The
20 Court asked a question regarding whether or not she was
21 able to determine whether or not there was semen in the
22 anus or rectum. She said she couldn't. And no evidence
23 has been presented and no evidence has been presented that
24 there was.

25 In summary, I've presented the arguments in

1 writing because I didn't want to miss anything important.
2 Clearly, the defendant's mental health history should be
3 of paramount concern to this Court. He is a smart person.
4 He is an articulate person. He's a sick person. The same
5 things that got him admitted to the Nevada Veterans
6 Administration hospital on January 7th of this year are
7 aptly demonstrated in his interviews with the police on
8 March 9th of this year.

9 As I noted in my paperwork, Mr. Dennis
10 accepts responsibility. He pled guilty in this case. I
11 don't think that the fact that he's cooperative should
12 weigh against him. The fact that he's cooperative should
13 be counted as mitigating evidence in this case. And based
14 on all the information I put in the memorandum regarding
15 sentencing, the evidence before the Court, and the
16 weighing that the Court must do when it makes a decision
17 in this case, I would respectfully submit that Mr. Dennis
18 is deserving of a life sentence.

19 Thank you.

20 JUDGE BERRY: Mr. Greco.

21 MR. GRECO: Just very briefly.

22 My response to many of the points would
23 simply require me to repeat myself. I'm not going to do
24 that. I'll just respond to some new things.

25 Ms. Pusich said that DA Greco said life is

1 pretty cheap. That's not exactly what I said. What I
2 said was as the Court's well aware life is pretty cheap
3 out there on the streets. And what I meant by that, of
4 course, is not any personal belief or opinion by me that
5 life is cheap, what I meant is people get murdered every
6 day in large communities for very, very little motive, for
7 minimal reasons. And this case is yet another example of
8 that. He meets her. He just decides that she's pathetic,
9 and he's going to, quote, put her out of her misery. He
10 made that decision like that when he first saw her on the
11 street.

12 Now, Ms. Pusich correctly points out, if he
13 goes to prison, he will be in a men's prison that does not
14 contain the female inmates. And that is correct as of
15 now. But of course prisons have female guards. Persons
16 escape from prison. Just because someone goes to prison
17 for a period of time does not guarantee that he can't kill
18 a woman or, for that matter, a man. Particularly if he
19 becomes very frustrated.

20 Now, Ms. Pusich said that the belt may not
21 have, in terms of using it as a weapon, it may not be
22 premeditated, deliberate for a period of time. I don't
23 dispute that. There's no evidence to the contrary. But
24 the point being, it's a weapon. By case law in this
25 state, even if it's used partially to kill a victim in

1 this case, he finished her off with his fingers. It's
2 still a deadly weapon enhancement under 193.165.

3 Ms. Pusich correctly pointed out that
4 Dr. Raven testified there were no tears or trauma to the
5 anus that Dr. Raven observe. But she did observe that the
6 penis was dilated. Of course we have decompositional
7 changes going on that obscure much of what she saw. She
8 testified about that. But just because she couldn't see
9 anything doesn't automatically mean that there wasn't some
10 trauma.

11 The answer is we don't know for sure. But
12 decompositional changes affect the body and affect the
13 ability to see the trauma but the anus was dilated. There
14 was that hair that Detective Bennett saw on the buttocks
15 or upper thigh of the victim when he arrived, then there
16 was what he said was the apparent dry blood on her anus.

17 I don't know if I agree with her assessment
18 that he spent one-third of the interview talking to
19 himself, but the Court saw the tape, can reach its own
20 factual conclusions in that regard. But what I would like
21 to say, as you heard his words and read in the transcript,
22 a lot of those things he said were things that you would
23 expect someone in custody or about to be arrested for
24 murder might say like, shit, and swearing and he made some
25 complaints, suggesting they were asking him things too

1 many times. And I don't think what you saw there was a
2 ranting, raving lunatic. I think you saw someone that was
3 frustrated with the length of the interview, talked to
4 himself. But a lot of people, a lot of average, ordinary,
5 reasonable people talk to themselves every day. If we all
6 had video cameras staring at us all day long when we're
7 alone we might be surprised at what we see.

8 The other things she's raised I've already
9 addressed so I don't want to repeat myself. I think the
10 Court has more than enough. And with that, I would simply
11 submit it again from the State's perspective. We believe
12 this is a death case.

13 JUDGE BERRY: Thank you, Mr. Greco.

14 Ms. Pusich, the Defense will be allowed to
15 make a final statement in this case. Did you wish to make
16 any additional comments?

17 MS. PUSICH: No, thank you, Your Honor. I'm
18 actually surprised by the offer. I think under the rules
19 I'm not entitled but I don't have anything even with that
20 generous offer.

21 JUDGE BERRY: The Nevada Supreme Court
22 certainly has not taken a position on it, but I believe
23 some other states have indicated that in death cases it's
24 appropriate to allow the Defense to have any final
25 statements or thoughts. So I certainly wanted to give you

1 every opportunity.

2 MS. PUSICH: Thank you, Your Honor.

3 JUDGE BERRY: All right. The Court has heard
4 arguments of counsel and took a lengthy recess this
5 afternoon to review all the documents provided by Defense.
6 This Court will stand in recess subject to the call of the
7 Court for deliberation on the penalty phase. If counsel
8 would please provide numbers they can be reached at so
9 they can return to court as quickly as possible. We'll
10 stand in recess.

11 (Recess taken.)

12 JUDGE BERRY: The record should reflect that
13 we are back in the courtroom in State versus Terry Jess
14 Dennis, CR99-0611. The Court has deliberated in the
15 penalty phase of these proceedings and the Court makes the
16 following findings:

17 The Court finds that the State has proven
18 three aggravating circumstances beyond a reasonable doubt,
19 and those would be the three prior felony convictions of
20 assault, the assault upon Barbara Johnson; another count
21 of assault upon Police Officer Stephen Foster; and the
22 third certified felony conviction of arson which involved
23 Lana Miller at the home of Fred Rassmussen.

24 The Court further finds that the mitigators
25 presented by the Defense are that the defendant stated he

1 was under the influence of alcohol when he killed the
2 victim, and the documents presented by the Defense
3 establishing the defendant suffers from mental illness.

4 The Court further finds that the three
5 aggravating circumstances outweigh the mitigating factors
6 presented, and this Court imposes the penalty of death.

7 Have you prepared the Warrant?

8 MR. GRECO: Yes, Your Honor. I've prepared
9 the Warrant and the associated paperwork pursuant to NRS
10 176.345.

11 May I approach?

12 JUDGE BERRY: You may.

13 MR. GRECO: Your Honor, that proposed
14 Findings of Fact is just that, proposed. Obviously the
15 Court's specific findings are going to supersede that. So
16 that's simply for the Court's reference. The other
17 documents are simply required by the statute.

18 JUDGE BERRY: Is the State requesting that
19 the Court add more specificity to the prior felony
20 convictions which have been previously introduced?

21 MR. GRECO: Your Honor, because the
22 aggravating factors found are slightly different, again,
23 that was just a proposed document. What I would recommend
24 is either the Court do its own Findings of Fact, or, if
25 you wish, I can prepare another draft of that that

1 conforms with the findings you just made, submit that to
2 the Court tomorrow morning, if you wish. Whatever the
3 Court's preference is.

4 JUDGE BERRY: That would be the Court's
5 preference is the deliberations of the Court have been
6 enunciated and those were the findings of the Court as to
7 the aggravators and the mitigators.

8 MR. GRECO: I'll submit that first thing in
9 the morning, Your Honor.

10 JUDGE BERRY: You have presented the Court
11 with a Judgment of Conviction.

12 MR. GRECO: Your Honor, the statute requires
13 that one of those documents, either the verdict or the
14 judgment, also list the aggravators found. So what I
15 would recommend is this: Since we have to wait for the
16 morning, why don't I take the packet back so they all
17 conform, all have the same aggravators, and I also have to
18 add in these mitigators you've mentioned as well. So I
19 would recommend we do that and then have all the documents
20 executed in the morning, if that's going to work for the
21 other two members of the panel.

22 JUDGE BERRY: Well, the other members of the
23 panel, being busy District Court judges, have made
24 arrangements to depart the jurisdiction this evening.

25 MR. GRECO: Your Honor, may I have a moment?

1 I want to make sure I have a staff member to make these
2 changes. I don't know that I do. We're past 5:00.

3 MS. PUSICH: Your Honor, also, we've never
4 seen any of them.

5 JUDGE BERRY: Ms. Pusich, if you'd like to
6 approach.

7 MR. GRECO: We're checking right now to see
8 if we have a staff member. The problem is it's in the
9 control of the word processing center. I can't access the
10 documents that they have drafted, and so we need to make
11 sure there's one of them available before I can give you
12 an answer.

13 JUDGE BERRY: Is it counsel's understanding
14 that pursuant to Rule 250, the documents have to be
15 crafted in the form offered by the State, as it may be
16 more efficient to go ahead and draft the standard document
17 used in jury trials that the judges could sign off on the
18 finding of the three aggravators?

19 JUDGE CHERRY: I think we can do it by
20 interlineation so we can sign right now, if you just bring
21 it back up here. All you need to do is strike number one,
22 the finding.

23 MR. PETTY: I believe you can do that by
24 interlineation, initialed by each of you.

25 JUDGE BERRY: Then perhaps that would be most

1 efficient.

2 MR. PETTY: While we're perusing these
3 documents, I would like to inform the Court that obviously
4 tomorrow I will be submitting an order to stay any
5 execution. As set forth by statute, it's automatically
6 stayed anyway, but just as a precaution.

7 JUDGE BERRY: Thank you very much.

8 MS. PUSICH: Thank you. We've had an
9 opportunity to review these. With the interlineated
10 changes, they would be acceptable to us.

11 JUDGE BERRY: Page two, line one, the Court
12 has stricken the word "four" and inserted the word
13 "three." Page two, line three through eight stricken by
14 the Court and all of these interlineations will be
15 initialed by all --

16 JUDGE CHERRY: We want to make this one, two
17 three?

18 JUDGE BERRY: Yes.

19 MR. GRECO: Which particular document is
20 that, Your Honor?

21 JUDGE BERRY: This is the Judgment of
22 Conviction.

23 And on line 25, page two, strike the word "no
24 mitigating circumstances" and insert that "there were two
25 mitigating circumstances."

1 As to the Findings of Fact and Conclusions of
2 Law, page one, paragraph one will be stricken.

3 Counsel, we have made the interlineation,
4 amendments to the Judgment of Conviction. And those would
5 be reflected as striking paragraph one and renumbering the
6 following paragraphs for the aggravating circumstances as
7 one, two and three, and striking the "no mitigating
8 circumstances" to "two mitigating circumstances."

9 As to the Findings of Fact and Conclusions of
10 Law, we've made the like amendments by interlineation
11 pursuant to the Court's findings, and the Court does find
12 that the aggravating circumstances in this case are not
13 outweighed by any mitigating or by the mitigating evidence
14 presented. And for those reasons the Court imposes the
15 penalty of death.

16 This Court has signed the death penalty
17 verdict and we will execute the Warrant of Execution. And
18 on the Warrant of Execution, paragraph one should be
19 likewise deleted. That would be page two.

20 Counsel, we need to set the date for
21 execution.

22 MR. GRECO: Yes. We understand the judgment
23 will be stayed, but the statute does require that we set
24 that date now. And the statute reads that you set that on
25 a week beginning with a Monday -- and I filled in Monday

1 there in the documents -- that is no less than 60 nor more
2 than 90 days from the day of judgment. So you should set
3 that date somewhere within that time frame.

4 JUDGE BERRY: Ms. Clerk, could you provide a
5 calendar, please.

6 The Court has conferred on the Order of
7 Execution and we will set the execution for the defendant
8 on the 27th day of September 1999.

9 I'm going to ask counsel to approach and
10 review these documents with the interlineation amendments
11 that have been placed by the Court before we adjourn.

12 (Reviewing documents.)

13 JUDGE BERRY: Any objections from the State
14 or the Defense as to the interlineation amendments to the
15 documents prepared by the State?

16 MR. GRECO: None from the State.

17 MS. PUSICH: None as to the form of the
18 documents, Your Honor.

19 JUDGE BERRY: Mr. Petty.

20 MR. PETTY: None, Your Honor.

21 JUDGE BERRY: The Court understands that you
22 will seek a stay of execution. The Court appreciates the
23 work of all counsel in this case, and thanks my colleagues
24 from the Eighth Judicial District and the Fourth Judicial
25 District for their dedication to this effort.

1 The deliberations were done with great
2 thought and predicated upon all of the information brought
3 before the Court by both the Defense and the State.

4 With that said, judgment is entered. Court
5 will stand in recess.

6 (Recess taken at 5:20 p.m.)
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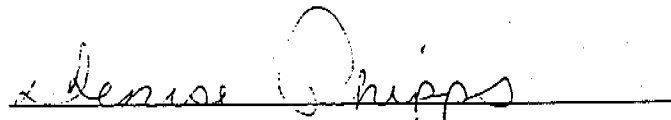
1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, DENISE PHIPPS, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in
6 and for the County of Washoe, do hereby certify;

7 That I was present in Department No. 1 of the
8 above-entitled Court on July 20, 1999 and took verbatim
9 stenotype notes of the proceedings had in the matter
10 entitled herein;

11 That the foregoing transcript is a full, true
12 and correct transcription of my stenotype notes of said
13 proceedings.

14 DATED: At Reno, Nevada, this 20th day of July,
15 1999.

16
17 

18 DENISE PHIPPS, CCR #234
19
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24
25

FILED

7/26/99
AMY HARVEY, Clerk

By [Signature]
Deputy Clerk

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2 Richard A. Gammick
3 #001510
4 P.O. Box 30083
5 Reno, NV 89520-3083
6 (775) 328-3200
7 Attorney for Plaintiff

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF WASHOE.

10 * * *

11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

Case No. CR99-0611

14 TERRY JESS DENNIS,

Dept. No. 1

15 Defendant.

16 FINDINGS OF FACT AND CONCLUSIONS OF LAW

17 The Court in the above-entitled action, finds beyond a
18 reasonable doubt that Count I, First Degree Murder With the Use
19 of a Deadly Weapon, committed by the defendant, was aggravated by
20 the following circumstance or circumstances.

21 1. That the defendant subjected the victim of the
22 murder, Ilona Strauanis, to nonconsensual sexual penetration, as
23 defined in NRS 200.033(13), immediately before, during or
24 immediately after the commission of the murder, to wit, the

25 ///

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Vol. I.

defendant engaged forced the victim to submit to anal intercourse
shortly before and shortly after he killed her.

The defendant has been previously convicted of a
felony offense involving the use or threat of violence to the
person of another, to wit, in 1979 the defendant was convicted of
felony Assault in the Second Degree in Snohomish County Superior
Court, Washington.

The defendant has been previously convicted of a
felony offense involving the use or threat of violence to the
person of another, to wit, in 1984 the defendant was convicted of
felony Assault in the Second Degree in Snohomish County Superior
Court, Washington.

The defendant has been previously convicted of a
felony offense involving the use or threat of violence to the
person or another, to wit, in 1984 the defendant was convicted of
felony Second Degree Arson in Snohomish County Superior Court,
Washington.

The Court after hearing all of the evidence finds that
there are ~~no~~ mitigating circumstances pursuant to NRS 200.035.

Based upon all of the above factors and after careful
consideration of all of the evidence, the Court finds that the

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1 aggravating circumstances in this case, are not outweighed by any
2 mitigating evidence.

3 Dated this 20th day of July, 1999.

4
5 Janet Berry
6 JANET BERRY
7 DISTRICT JUDGE

8 Michael Cherry
9 MICHAEL CHERRY
10 DISTRICT JUDGE

11 Michael Memeo
12 MICHAEL MEMEO
13 DISTRICT JUDGE
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Attorneys for Petitioner/Next Friend

FILED RECEIVED
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COUNSEL PARTIES OF RECORD

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CLERK US DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TERRY JESS DENNIS, by and through
KARLA BUTKO, as Next Friend,

Petitioner,

vs.

MICHAEL BUDGE, Warden, and
BRIAN SANDOVAL, Attorney General
of the State of Nevada,

Respondents.

Case No.

CV-S-04-0798-PMP-RJJ

(Death Penalty Habeas Corpus Case)

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- Ex. 1 Medical Records from West Hills Hospital, BHC Health Services of Nevada, Inc.
July - September 1998
- Ex. 2 Affidavit of Compliance with SCR250, as amended, Affidavit of Maizie W.
Pusich. July, 20, 1999
- Ex. 3 Military Records of Terry Dennis, Department of the Air Force, 1965-1971
- Ex. 4 Uncertified Transcript of Statement of Terry Dennis, Reno Police Department,
March 9, 1999, Case No. 64128-99
- Ex. 5 In the Matter of the Examination of Terry Dennis, Petition for Court Order
Involuntary Admission, Case No. CV-95-05598, and Supporting Medical and
Psychological Materials, 1995-1998 (Bates Nos. 1-380)

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- Ex. 6 Information, State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, March 29, 1999
- Ex. 7 Notice of Intent to Seek Death Penalty Pursuant to NRS 200.033, NRS 175.552, and SCR 250(4)(c), State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, April 14, 1999
- Ex. 8 Guilty Plea Memorandum, State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, April 16, 1999
- Ex. 9 Arraignment, Transcript of Proceedings, State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, April 16, 1999
- Ex. 10 Washoe County Detention Center EMSA/Correctional Care records on Terry Dennis, March 1999
- Ex. 11 Faxed correspondence from Honorable Janet Berry to Medical Records, Washoe County Jail requesting records on Terry Dennis, April 15, 1999
- Ex. 12 Letter psychiatric evaluation from Edward Lynn, M.D. to Maize Pusich, March 24, 1999
- Ex. 13 Information, State of Washington v. Terry Jess Dennis, Case No. 79-1-00047-1, February 2, 1979
- Ex. 14 Amended Information, State of Washington v. Terry Jess Dennis, Case No. 79-1-00047-1, February 22, 1979
- Ex. 15 Amended Information, State of Washington v. Terry Jess Dennis, Case No. 84-1-00006-1, February 1, 1984
- Ex. 16 Washoe County Medical Examiner records re Iona Anita Straumanis, March 1999
- Ex. 17 Notice of Evidence in Aggravation, State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, June 8, 1999
- Ex. 18 Defendant's Memorandum Re: Sentencing, State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, July 20, 1999
- Ex. 19 Transcript of Proceedings Penalty Hearing on July 19, 1999, Volume 1 (pp. 1-90), State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, July 20, 1999
- Ex. 20 Transcript of Proceedings Penalty Hearing on July 19, 1999, Volume 2 (pp. 91-202), State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, July 20, 1999
- Ex. 21 Transcript of Proceedings Penalty Hearing on July 20, 1999, Volume 1 (pp. 1-64), State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, July 21, 1999
- Ex. 22 Transcript of Proceedings Penalty Hearing on July 20, 1999, Volume 2 (pp. 65-

116), State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, July 21, 1999

Ex. 23 Findings of Fact and Conclusions of Law, State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, July 20, 1999

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Ex. 24 Death Penalty Verdict, State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, July 20, 1999

Ex. 25 Judgment of Conviction, State v. Terry Jess Dennis, Case No. CR99-0611, Second Judicial District Court, Washoe County, July 20, 1999

Ex. 26 Petition for Writ of Habeas Corpus (Post-Conviction), Terry Dennis v. Don Helling et al., Case No. CR99-0611, April 9, 2001

Ex. 27 Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction), Terry Dennis v. E.K. McDaniel et al., Case No. CR99-P-0611, February 14, 2002

Ex. 28 Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction), Terry Jess Dennis v. State of Nevada, Case No. CR CR99-P-0611, March 1, 2002

Ex. 29 Order (instructing the State to file an Answer), Terry Jess Dennis v. State of Nevada, Case No. CR99-P-0611, March 1, 2002

Ex. 30 Opposition to State's Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction), Terry Dennis v. E.K. McDaniel et al., Case No. CR99-P-0611, May 1, 2002

Ex. 31 Reply to Petitioner's Opposition to Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction), Terry Dennis v. E.K. McDaniel et al., Case No. CR99-P-0611, May 29, 2002

Ex. 32 Notice of United States Supreme Court Decision on Case Cited in Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), Terry Dennis v. E.K. McDaniel et al., Case No. CR99-P-0611, July 26, 2002

Ex. 33 Order (requesting parties to file supplemental briefing re Ring v. Arizona), Terry Jess Dennis v. State of Nevada, Case No. CR99-P-0611, August 20, 2002

Ex. 34 Respondent's Supplemental Brief (regarding Ring v. Arizona), Terry Jess Dennis v. State of Nevada, Case No. CR99-P-0611, September 6, 2002

Ex. 35 Petitioner's Supplemental Brief re: Application of Ring v. Arizona, Terry Jess Dennis v. State of Nevada, Case No. CR99-P-0611, September 26, 2002

Ex. 36 Order (setting evidentiary hearing), Terry Jess Dennis v. State of Nevada, Case No. CR99-P-0611, November 20, 2002

Ex. 37 Motion to Reconsider Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction), Terry Jess Dennis v. State of Nevada, Case No. CR99-P-0611, December 23, 2002

- 1 Ex. 38 Opposition to Motion to Reconsider Motion to Dismiss Petition for Writ of
2 Habeas Corpus (Post-Conviction), Terry Dennis v. E.K. McDaniel et al., Case No.
CR99-P-0611, January 9, 2003
- 3 Ex. 39 Reply to Petitioner's Opposition to Motion to Reconsider Motion to Dismiss
4 Petition for Writ of Habeas Corpus (Post-Conviction), Terry Jess Dennis v. State
of Nevada, Case No. CR99-P-0611, January 13, 2003
- 5 Ex. 40 Notice of Entry of Order and Order, Terry Jess Dennis v. State of Nevada, Case
6 No. CR99-P-0611, June 4, 2003
- 7 Ex. 41 Notice of Appeal, Terry Jess Dennis v. State of Nevada, Case No. CR99-P-0611,
8 June 25, 2003
- 9 Ex. 42 Handwritten correspondence from Terry Dennis to "Your Honor," September 9,
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- 10 Ex. 43 Appellant's Opening Brief, Dennis v. State, Nevada Supreme Court
No. 41664, filed September 16, 2003
- 11 Ex. 44 Correspondence from Joseph R. Plater, Appellate Deputy Washoe County District
12 Attorney, to Karla K. Butko re: dismissing the appeal, September 22, 2003
- 13 Ex. 45 Correspondence from Karla K. Butko to Joseph R. Plater, Appellate Deputy
14 Washoe County District Attorney, re: defendant's post-conviction appeal
proceedings, September 24, 2003
- 15 Ex. 46 Motion for Remand and to Suspend Briefing Schedule, Dennis v. State,
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- 16 Ex. 47 Handwritten correspondence from Terry Dennis to Mr. Gammick, September 17,
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- 17 Ex. 48 Order Granting Motion, Dennis v. State, Nevada Supreme Court No. 41664,
18 October 22, 2003
- 19 Ex. 49 Order, Dennis v. State, Second Judicial District Court No. CR99-P-0611,
20 November 19, 2003
- 21 Ex. 50 Court Ordered Evaluation by Thomas E. Bittker, M.D., November 24, 2003
- 22 Ex. 51 Transcript of Proceedings of Post-Conviction Hearing, Dennis v. State, Second
Judicial District Court No. CR99P-0611, December 4, 2003
- 23 Ex. 52 Order, Dennis v. State, Second Judicial District Court No. CR99-P-0611,
24 December 22, 2003
- 25 Ex. 53 Order Directing Confirmation of Voluntary Waiver of Appeal, Dennis v. State,
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- 26 Ex. 54 Brief of Federal Public Defender as Amicus Curiae in Support of Appellant, Terry
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- 27 Ex. 55 Opposition to Motion for Leave to Appear Amicus Curiae, Terry Jess Dennis v.
28 State of Nevada, Case No. 41664, February 6, 2004

1	Ex. 56	Order Dismissing Appeal, <u>Terry Jess Dennis v. State of Nevada</u> , Case No. 41664, March 12, 2004
2		
3	Ex. 57	Warrant of Execution, <u>State of Nevada v. Terry Jess Dennis</u> , Case No. CR99-0611, May 17, 2004
4	Ex. 58	Opinion (affirming conviction on direct appeal), Nevada Supreme Court, <u>Terry Jess Dennis v. State of Nevada</u> , Case No. 34632, December 4, 2000
5		
6	Ex. 59	Notice of Withdrawal of Appeal, Nevada Supreme Court, <u>Terry Jess Dennis v. State of Nevada</u> , Case No. 41664, February 2, 2004
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Dorcas Pach
An employee of the Federal Public Defender

1 CODE 4245

FILED

7/20/99
AMY HARVEY, Clerk

By [Signature] Deputy Clerk

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5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

Case No. CR99-0611

2 TERRY JESS DENNIS,

Dept. No. 1

13 Defendant.
14 _____/

15 DEATH PENALTY VERDICT

16 The Court, having previously entered his plea of guilty
17 to Count I: FIRST DEGREE MURDER WITH THE USE OF A DEADLY WEAPON,
18 and having found beyond a reasonable doubt that aggravating
19 circumstances exist in this case and that there are no mitigating
20 circumstance or circumstances sufficient to outweigh the
21 aggravating circumstances, therefore sets the penalty and

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Vol. I.

1 sentence to be imposed upon the defendant on Count I, FIRST
2 DEGREE MURDER WITH THE USE OF A DEADLY WEAPON, at DEATH.

3
4 Dated this 20th day of July, 1999.

5
6 Janet G. Berry
JANET BERRY
DISTRICT JUDGE

7
8 Michael Cherry
MICHAEL CHERRY
DISTRICT JUDGE

9
10 Michael Memo
MICHAEL MEMEO
DISTRICT JUDGE
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FILED

7/20/99
AMY HARVEY, Clerk

By [Signature]
Deputy Clerk

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7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR99-0611

16 TERRY JESS DENNIS,

Dept. No. 1

17 Defendant.

18 JUDGMENT OF CONVICTION

19 WHEREAS, on the 16th day of April, 1999, defendant,
20 TERRY JESS DENNIS, entered a plea of Guilty to Count I: FIRST
21 DEGREE MURDER WITH THE USE OF A FIREARM, violations of NRS
22 200.010 and 200.030, and

23 WHEREAS, on the 19th day of July, 1999, a penalty
24 hearing commenced before the panel of three District Court
25 Judges;

26 WHEREAS, the duly constituted panel deliberating in the
penalty phase of said proceeding, in accordance with the
provisions of NRS 175.552 and 175.554, found beyond a reasonable

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Vol I.

three

1 doubt that there were ~~four~~ aggravating circumstances in
2 connection with the commission of said crime, to-wit:

3 1. The defendant subjected the victim of the murder,
4 Ilona Strauanis, to nonconsensual sexual penetration, as defined
5 in NRS 200.033(13), immediately before, during or immediately
6 after the commission of the murder, to wit, the defendant engaged
7 in anal intercourse with the victim shortly before and/or shortly
8 after he killed her.

9 ~~MAC~~ 1. The defendant has been previously convicted of a
10 felony offense involving the use or threat of violence to the
11 person of another, to wit, in 1979 the defendant was convicted of
12 felony Assault in the Second Degree in Snohomish County Superior
13 Court, Washington.

14 ~~MAC~~ 2. The defendant has been previously convicted of a
15 felony offense involving the use or threat of violence to the
16 person of another, to wit, in 1984 the defendant was convicted of
17 felony Assault in the Second Degree in Snohomish County Superior
18 Court, Washington.

19 ~~MAC~~ 3. The defendant has been previously convicted of a
20 felony offense involving the use or threat of violence to the
21 person or another, to wit, in 1984 the defendant was convicted of
22 felony Second Degree Arson in Snohomish County Superior Court,
23 Washington.

24 That on or about the 20th day of July, 1999, the panel
5 unanimously found, that there were ~~no~~ ^{two} mitigating circumstances.
26 Further, the panel found the aggravating factors outweighed any

1 mitigating evidence, and determined that the defendant's
2 punishment should be Death in the Nevada State Prison located at
3 or near Carson City, State of Nevada.

4 THEREFORE, the Clerk of the above-entitled Court is
5 hereby directed to enter this Judgement of Conviction as part of
6 the record in the above-entitled matter.

7 Dated this 20th day of July, 1999.

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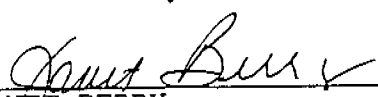
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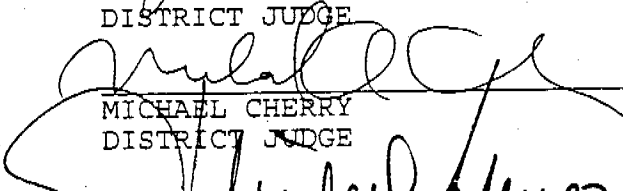
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26 07196114


JANET BERRY
DISTRICT JUDGE


MICHAEL CHERRY
DISTRICT JUDGE


MICHAEL NEMES
DISTRICT JUDGE

ER 1152

Courtesy
copies
April 9, 2001

- 1 (b) If sentence is death, state any date upon which execution is scheduled:
2 None.
- 3 6. Are you presently serving a sentence for a conviction other than the conviction under
4 attack in this motion? Yes No X
- 5 If "yes", list crime, case number and sentence being served at this time: N/A
- 6 7. Nature of offense involved in conviction being challenged: First Degree Murder
7 With the Use of a Deadly Weapon
- 8 8. What was your plea? (check one)
9 (a) Not guilty (c) Guilty but mentally ill
10 (b) Guilty X (d) Nolo contendere
- 11 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment
12 or information, and a plea of not guilty to another count of an indictment or information, or if a plea
13 of guilty or guilty but mentally ill was negotiated, give details: Entered a guilty plea on April 16,
14 1999 pursuant to a written plea agreement.
- 15 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)
16 (a) Jury N/A
17 (b) Judge without a jury N/A
- 18 11. Did you testify at the trial? Yes No Not applicable.
- 19 12. Did you appeal from the judgment of conviction?
20 Yes X No
- 21 13. If you did appeal, answer the following:
22 (a) Name of court: Supreme Court of Nevada
23 (b) Cases number or citation: 34632; 116 Nev. Adv. Op. No. 113, 13 P.3d 434
24 (2000).
25 (c) Result: Judgment Affirmed

1 (d) Date of result: December 14, 2000

2 (Attach copy of order or decision, if available) Copy attached.

3 14. If you did not appeal, explain briefly why you did not:

4 Not applicable.

5 15. Other than a direct appeal from the judgment of conviction and sentence, have you
6 previously filed any petitions, applications or motions with respect to this judgment in any court,
7 state or federal? Yes No X

8 16. If your answer to No. 15 was "yes", give the following information:

9 (a) (1) Name of court: N/A

10 (2) Nature of proceeding: N/A

11 (3) Grounds raised: N/A

12 (4) Did you receive an evidentiary hearing on your petition, application
13 or motion? Yes No Not applicable.

14 (5) Result: N/A

15 (6) Date of result: N/A

16 (7) If known, citations of any written opinion or date of orders entered
17 pursuant to such result: N/A

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: N/A

20 (2) Nature of proceeding: N/A

21 (3) Grounds raised: N/A

22 (4) Did you receive an evidentiary hearing on your petition, application
23 or motion? Yes No Not applicable.

24 (5) Result: N/A

25 (6) Date of result: N/A

26

1 (7) If known, citations of any written opinion or date of orders entered
2 pursuant to such result: N/A

3 (c) As to any third or subsequent additional applications or motions, give the
4 same information as above, list them on a separate sheet and attach. N/A

5 (d) Did you appeal to the highest state or federal court having jurisdiction, the
6 result or action taken on any petition, application or motion? N/A

7 (1) First petition, application or motion?

8 Yes ___ No ___

9 (2) Second petition, application or motion?

10 Yes ___ No ___

11 (3) Third or subsequent petitions, applications or motions?

12 Yes ___ No ___

13 Citation or date of decision.

14 (e) If you did not appeal from the adverse action on any petition, application or
15 motion, explain briefly why you did not. (You must relate specific facts in response to this question.
16 Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your
17 response may not exceed five handwritten or typewritten pages in length)

18 Not applicable.

19 17. Has any ground being raised in this petition been previously presented to this or any
20 other court by way of petition for habeas corpus, motion, application or any other post-conviction
21 proceeding? If so, identify: No.

22 (a) Which of the grounds is the same: _____

23 (b) The proceedings in which these grounds were raised:

24 _____

25 _____

26 _____

1 (c) Briefly explain why you are again raising these grounds. (You must relate
2 specific facts in response to this question. Your response may be included on paper which is 8 ½
3 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
4 pages in length.)

5 Not applicable.

6 18. If any of the grounds listed in Nos. 23(a), (b) and (c), or listed on any additional
7 pages you have attached, were not previously presented in any other court, state or federal, list
8 briefly what grounds were not so presented, and give your reasons for not presenting them. (You
9 must relate specific facts in response to this question. Your response may be included on paper
10 which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten
11 or typewritten pages in length.)

12 Ineffective assistance of trial and/or appellate counsel.

13 19. Are you filing this petition more than 1 year following the filing of the judgment of
14 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.
15 (You must relate specific facts in response to this question. Your response may be included on
16 paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five
17 handwritten or typewritten pages in length.) No.

18 20. Do you have any petition or appeal now pending in any court, either state or federal,
19 as to the judgment under attack? Yes No X

20 If yes, state what court and the case number: N/A

21 21. Give the name of each attorney who represented you in the proceeding resulting in
22 your conviction and on direct appeal: Michael R. Specchio, John Reese Petty and Maizie Whalen
23 Pusich

24 22. Do you have any future sentences to serve after you complete the sentence imposed
25 by the judgment under attack: Yes No X

1 23. State concisely every ground on which you claim that you are being held unlawfully.
2 Summarize briefly the facts supporting each ground. If necessary you may attach pages stating
3 additional grounds and facts supporting same.

4 CLAIM ONE

5 Petitioner's death sentence is invalid under the state and federal constitutional guarantees
6 of due process, equal protection, and a reliable sentence due to the imposition of sentence by a three-
7 judge panel. U.S. Const. Amends. V, VI, VIII & XIV; Nev. Const. Art. 1 §§ 6, 8, Art. 4 § 21.

8 SUPPORTING FACTS

9 1. Petitioner was sentenced to death by a three-judge panel convened pursuant to Nev.
10 Rev. Stat. § 175.558. The three judge panel procedure contains no constitutionally adequate notice
11 or opportunity to be heard with respect to the selection of the panel members; provides no
12 constitutionally adequate procedure or substantive standards for ensuring the impartiality of the
13 sentencing panel; results in a sentence which is "organized to return a verdict of death"; and
14 deprives the defendant of the liberty interest accorded by the state constitution in sentencing by a
15 constitutionally-organized court.

16 2. The Nevada statutory scheme provides that two district judges, from districts other
17 than the one in which the trial or plea occurred, shall be appointed to serve along with the judge
18 presiding over the trial or plea. Other than providing that the judges must be appointed by the
19 Nevada Supreme Court, the statutory scheme does not prescribe any method by which the judges
20 are selected for appointment, nor does it prescribe any method for examining the appointed judges
21 as to their impartiality in the case to which they are appointed. The selection process is not public
22 and open, and there is no participation by the defense in any procedure to ensure the impartiality of
23 the body. The selection procedure of the three-judge panel system in Nevada is shrouded in secrecy:
24 the Nevada Supreme Court historically has refused to disclose the manner in which members are
25 selected. The fact that the secret selection process is unconstitutionally arbitrary is supported by the
26

1 disclosure of the Nevada Supreme Court's previously secret method for selecting district court
2 judges to replace disqualified members of the Supreme Court pursuant to Nev. Const. Art. 6 § 4.
3 That information demonstrates that the court uses criteria for selecting replacement justices which
4 are not supported by any constitutional or statutory provision, and which exclude the only African-
5 American district judges from sitting as replacement justices in cases arising from the judicial
6 district that has the largest African-American population in the state. Nevada Supreme Court
7 Interim Internal Operating Procedures, Rule 1(f) (December 14, 1998).

8 3. In the absence of any rational, prescribed method for selecting three-judge panels,
9 the Nevada Supreme Court has chosen to select panels in a manner consistently organized to return
10 verdicts of death. According to the approximation of one member of the Nevada Supreme Court,
11 three-judge panels do return death verdicts in 90 percent of the cases which come before them. A
12 procedure that produces such a result is not working rationally to select the few cases in which a
13 death sentence is warranted from the many where it is not. The absence of neutral and effective
14 mechanisms for selecting and qualifying the panel members to act, in effect, as jurors in a capital
15 case violates the clearly established federal constitutional guarantees of due process of law, equal
16 protection of the laws, and a reliable sentence.

17 4. The three-judge panel, which functions as both a jury and a three-judge district court,
18 constitutes a legislatively created court in violation of the separation of powers clause of the Nevada
19 constitution. The use of an unconstitutional state court as the sentence in capital cases violates due
20 process, equal protection and reliable sentence guarantees of the federal constitution.

21 5. The defendant did not knowingly, intelligently or voluntarily waive the constitutional
22 rights cited above.

23 6. Under clearly established law, any fact (other than a prior conviction) that increases
24 the penalty for a crime beyond the prescribed statutory maximum must be charged in the indictment
25 submitted to a jury, and proven beyond a reasonable doubt. Under Nevada law, first degree murder
26

1 is punishable by various terms of imprisonment, § 200.030(4)(b), but it is punishable by death "only
2 if one or more aggravating circumstances are found and any mitigating circumstance or
3 circumstances which are found do not outweigh the aggravating circumstance or circumstances...."
4 Nev. Rev. Stat. § 200.030(4)(a) (emphasis supplied). The status of aggravating circumstances as
5 elements of capital-eligible first degree murder in Nevada is further demonstrated by the last
6 sentence of § 200.030(4): "A determination of whether aggravating circumstances exist is not
7 necessary to fix the penalty at imprisonment for life with or without the possibility of parole." Thus
8 under state law both the existence of aggravating factors, and the determination that the aggravating
9 factors are not outweighed by the mitigating factors, are necessary elements of death eligibility and
10 are necessary to increase the maximum punishment provided for first degree murder from the
11 various possible sentences of imprisonment to death. The due process guarantee of the federal
12 Constitution requires those elements to be decided by a jury. The three-judge panel procedure,
13 which allows judges to make those findings, is unconstitutional. No knowing, intelligent, voluntary
14 and valid waiver of the constitutional right to jury trial as to the aggravating factors was elicited
15 from petitioner.

16 7. The unconstitutionality of the sentencing procedure is prejudicial per se, and no
17 specific showing of prejudice is required. This error is necessarily substantially injurious to the
18 petitioner's constitutional right to a fundamentally fair sentencing hearing.

19 CLAIM TWO

20 Petitioner's conviction and sentence are invalid because he was tried and sentenced by a
21 tribunal that does not satisfy constitutional standards of impartiality. U.S. Const. Amendments VI, VIII,
22 XIV; Nev. Const. Art. 1 § 8.

23 SUPPORTING FACTS

24 1. Under Nevada law, district judges and justices of the Supreme Court are popularly
25 elected and retain their offices only through a system of contested judicial elections. Nev. Const.

1 Art 6 § 3, 5; Nev. Rev. Stat. §§ 2.030, 3.080, 281.010(f, g), 293.197.

2 2. Petitioner entered his plea and was sentenced by district judges subject to popular
3 election, and his conviction and sentence were reviewed by justices of the Nevada Supreme Court
4 who are subject to popular election.

5 3. At the time of the adoption of the Federal Constitution in 1791, the common law
6 judges who could preside over a capital trial or review reserved questions of law were appointed
7 during good behavior, 1 William Blackstone, Commentaries on the Laws of England *258-259 (1st
8 ed. 1765). A system in which judges could be removed for their decisions was recognized by the
9 framers of the Constitution as inconsistent with the common law and with fundamental fairness.
10 See Declaration of Independence ¶ 11 (1776) (complaining that sovereign "made judges dependent
11 on his will alone, for the tenure of their offices."). The Nevada system of imposing convictions and
12 sentences for capital offenses by judges subject to removal for their decisions, who are therefore not
13 constitutionally impartial, violates the due process and reliable sentence guarantees of the Federal
14 Constitution.

15 4. Trial and sentencing, and appellate review, before a tribunal that does not satisfy
16 constitutional standards of impartiality is structural error that requires per se reversal of the capital
17 conviction and sentence.

18 CLAIM THREE

19 Petitioner's conviction and death sentence are invalid due to the violation of his state and
20 federal constitutional right to counsel. U.S. Const. Amend. VI; Nev. Const. Art. 1 § 8.

21 SUPPORTING FACTS

22 1. Prior to trial and to the penalty hearing, trial counsel abdicated the responsibility to
23 provide effective assistance, by allowing the defendant to make tactical and strategic choices as to
24 the conduct of the litigation which are committed to counsel's professional judgment, and which,
25 unlike the right to choose the plea or to testify, are not committed to the defendant's choice. The
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1 failure of trial counsel to provide any assistance by making the professional choices that are
2 committed to counsel amounted to a complete absence of counsel at critical stages of the
3 proceedings and is therefore reversible per se; in the alternative, it is reasonably probable that a
4 different result would have been obtained if counsel had provided assistance as to the professional
5 decisions committed to the responsibility of counsel.

6 2. Trial counsel failed to conduct a complete investigation of petitioner's background
7 and history in order to advise him adequately as to the entry of his plea or to conduct the penalty
8 hearing. If counsel had conducted such a complete investigation, it is reasonably probable that a
9 different result would have been obtained, as will be established after appointed counsel conducts
10 a complete investigation and discovery in connection with this petition.

11 3. Trial counsel failed to adequately investigate, analyze, or seek expert assistance with
12 respect to petitioner's mental state at trial, specifically as to the effect of his bipolar mental illness
13 and depression on his ability to make rational choices with respect to the trial proceedings; and
14 failed to obtain expert assistance and/or court orders to medicate petitioner appropriately for his
15 mental illness and depression, in order to allow him to make rational decisions that were not affected
16 by his mental illness and depression. Had counsel performed adequately, it is reasonably probable
17 that a different result would have been obtained.

18 4. Trial and appellate counsel failed to raise or litigate any of the claims alleged in
19 Claims 1 and 2 of this petition. The claims raised in Claims 1 and 2 are meritorious and would
20 result in the per se reversal of petitioner's sentence, and the failure of counsel to provide effective
21 assistance is therefore prejudicial.

1 WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be
2 entitled in this proceeding.

3 EXECUTED at Nevada State Prison on the 5th day of April, 2001.
4
5

6 
7 Signature of Petitioner

8 P.O. Box 607, Carson City, NV 89702
9 Address

10 _____
11 Signature of Attorney (if any)
12 Attorney for Petitioner
13 Address

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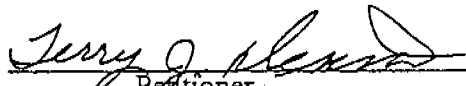
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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


Petitioner

Attorney for Petitioner

Supreme Court of Nevada.

Terry Jess DENNIS, Appellant,
v.
The STATE of Nevada, Respondent.

No. 34632.

Dec. 4, 2000.

Defendant was convicted upon guilty plea in the Second Judicial District Court, Washoe County, Janet J. Berry, J., of first-degree murder with the use of a deadly weapon and was sentenced to death. Defendant appealed. The Supreme Court, Becker, J., held that: (1) inquiry into excessiveness of death sentence, while not involving a proportionality review, may involve a consideration of whether various objective factors previously considered relevant to excessiveness in other cases are present; and (2) death sentence was not excessive.

Affirmed.

West Headnotes

[1] Sentencing and Punishment ⇨ 1705
350Hk1705

Capital sentencing panel's finding of three aggravating circumstances, in form of three prior felony convictions involving use or threat of violence to the person of another, was supported by felony assault conviction for putting knife to victim's neck and then ripping blade through victim's hand, by felony arson conviction for setting on fire a house in which an individual with whom defendant had quarreled was visiting, and by felony assault conviction for lunging with knife at officer who responded to arson report. N.R.S. 177.055, subd. 2, 200.033, subd. 2(b).

[2] Sentencing and Punishment ⇨ 1668
350Hk1668

[2] Sentencing and Punishment ⇨ 1700
350Hk1700

[2] Sentencing and Punishment ⇨ 1702
350Hk1702

Death sentence was not imposed under the influence of passion, prejudice, or any other arbitrary factor, where three-judge sentencing panel considered evidence of charged murder, background and

characteristics of defendant, and both the aggravating and mitigating circumstances before concluding that aggravating circumstances outweighed the mitigating and a death sentence was appropriate. N.R.S. 177.055, subd. 2(c).

[3] Sentencing and Punishment ⇨ 1788(5)
350Hk1788(5)

Supreme Court review a death penalty for excessiveness under death penalty statute considering only the crime and the defendant at hand. N.R.S. 177.055, subd. 2(d).

[4] Sentencing and Punishment ⇨ 1788(5)
350Hk1788(5)

Inquiry into excessiveness of a death sentence, while not involving a proportionality review, may involve a consideration of whether various objective factors that were previously considered relevant to excessiveness in other cases are present and suggest the death sentence under consideration is excessive. N.R.S. 177.055, subd. 2(d).

[5] Sentencing and Punishment ⇨ 1676
350Hk1676

[5] Sentencing and Punishment ⇨ 1705
350Hk1705

[5] Sentencing and Punishment ⇨ 1709
350Hk1709

[5] Sentencing and Punishment ⇨ 1712
350Hk1712

Death penalty imposed for first-degree murder with use of deadly weapon was not excessive, despite defendant's mental illness and his intoxication from alcohol at time of crime, where defendant deliberately strangled victim over course of five to ten minutes and made efforts to assure her death, and aggravating circumstances in form of three prior felony convictions showed continuing pattern of violence spread out over time and increasing in severity. N.R.S. 177.055, subd. 2(d).

*435 Michael R. Specchio, Public Defender, and John Reese Petty, Chief Deputy Public Defender, Washoe County, for Appellant.

Frankie Sue Del Papa, Attorney General, Carson City; Richard A. Gammick, District Attorney, and Joseph R. Plater III, Deputy District Attorney,

Washoe County, for Respondent.

BEFORE THE COURT EN BANC.

OPINION

BECKER, J.:

The State charged appellant Terry Jess Dennis by information with one count of first-degree murder with the use of a deadly weapon for the March 1999, willful, deliberate and premeditated strangulation murder of Ilona Straumanis. The State subsequently filed a notice of intent to seek the death penalty.

On April 16, 1999, Dennis entered a guilty plea, pursuant to a written plea agreement, to first-degree murder with the use of a deadly weapon. A penalty hearing was conducted before a three-judge panel. The panel found that three alleged aggravators (three prior felony convictions involving the use or threat of violence to the person of another) were proved beyond a reasonable doubt. The panel also found two mitigating circumstances existed: Dennis was under the influence of alcohol when he killed Straumanis, and he suffers from mental illness. The panel concluded that the mitigating circumstances did not outweigh the aggravating circumstances and returned a verdict of death.

Dennis argues only that his sentence of death is excessive. We affirm.

FACTS

On the afternoon of March 9, 1999, Dennis, who was fifty-two years old, unemployed and homeless, telephoned the Reno Police Department ("RPD") Dispatch, and told a dispatcher that he had killed a woman and her body was in his room at a local motel. Dennis stated that he was in the same room watching television and would wait for police to arrive. Dennis also stated that dispatchers should send a coroner, as "[t]he bitch ha[d] been dead for three or four days."

An RPD detective responded to Dennis's motel room, contacted Dennis, and asked whether he had any weapons. Dennis stated that he had used his hands to kill the victim and did not have any weapons. He agreed to be interviewed and was transported to the police department.

At the police department, detectives advised Dennis

of his *Miranda* [FN1] rights. Dennis waived his rights and agreed to be interviewed. When questioned about the murder, Dennis stated that his memory was unclear on certain details because he had consumed about a fifth of vodka a day for the past week. [FN2]

FN1. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

FN2. Following the interview, Dennis's blood alcohol level was tested and determined to be .112 and descending. However, Dennis does not dispute the knowing and voluntary nature of his statements.

During the interview, Dennis reported the following. He had been staying at the motel where the murder occurred since March 3, 1999. Two or three nights into his stay, he left his room to go to a local saloon. On his way to the saloon, he met the victim, who *436 was later identified as Ilona Straumanis, a fifty-six-year-old woman. Straumanis had bruises about her eyes and told Dennis that she had been beaten by another man. Straumanis accompanied Dennis to the saloon, and later, to Dennis's motel room. Thereafter and until the murder, both Dennis and Straumanis remained in an intoxicated state, staying in Dennis's room, except for a shared meal out and Dennis's outings to get more alcohol.

On the day he killed Straumanis, he left the room briefly because Straumanis was asking too many personal questions. Upon his return to the room, he and Straumanis engaged in a conversation about whether Dennis had ever killed anyone. Straumanis accused Dennis of being too kind to be capable of killing. Dennis then killed Straumanis, as he and she were "sort of" "making love."

He began strangling Straumanis with a belt. He felt somewhat aroused by Straumanis's struggling, and as she was "fading," he engaged in anal intercourse with her. During the course of the killing, he took the belt off and used his hands to choke her, and then suffocated her by covering her nose and mouth, making sure that she was not breathing and that "it was all done." He was not certain whether he finished the sexual act once she was dead. It took five or ten minutes to kill Straumanis, and Dennis checked her pulse afterward. He felt that he "had to make sure," so he "took [his] time."

After the murder, Dennis covered Straumanis's body and slept in the other bed. Prior to contacting police, Dennis also left the room at times to go to a local

casino or the store for more liquor.

Dennis admitted that, although he had been drinking heavily prior to the murder and had stopped taking the medications prescribed for his mental health problems, he knew "exactly what [he] was doing" at the time of the murder. He killed Straumanis primarily because she challenged whether he was capable of killing, but also in response to a challenge from Straumanis regarding his sexual performance, which was affected by his drinking, and because he knew that he could kill her--she was "nobody" to him. He explained that he was probably thinking that Straumanis needed to be "put out of her misery" from the time he first met her and realized that she was "pathetic." He stated, "[W]hen I first met her, I had that ... idea that if you know I can talk her into ... coming back to my crib then done deal. Done deal." He saw himself as a "predator" and Straumanis as a "victim," and he felt that killing her was "the thing to do." Dennis had recently "picked up" another woman, intending to do the same thing to her, but she got frightened and left him before he could finish. From that experience he had learned to "[t]ake it a little slower," and he did so with Straumanis, trying to charm her into staying with him. Dennis was determined to kill Straumanis regardless of whether she survived his initial attack. He had been wanting to kill someone for a long time, and he felt at peace with killing Straumanis. Dennis stated that he did not care about anybody, including himself. He knew murder was wrong and did not care. Dennis also told detectives, "[I]f I didn't get stopped this would not be the last time that I would do something like this, because I found it exciting. I actually enjoyed it."

At the conclusion of the interview, detectives formally placed Dennis under arrest.

Meanwhile, another RPD detective searched Dennis's motel room pursuant to a search warrant. There, the detective discovered Straumanis's nude dead body underneath a blanket on one of the two beds in the room. Straumanis's body was found in a prone position with spread legs. A pillow underneath Straumanis's pelvis caused her buttocks to protrude upward. The detective also discovered a leather belt on the floor of the motel room and numerous empty beer and Vodka containers, along with other debris.

An autopsy performed on Straumanis's body on March 10, 1999, showed that she had died between three and seven days earlier as a result of asphyxia due to neck compression, most likely by strangulation.

Straumanis's neck bore a rectangular-shaped injury. Other injuries were determined to have occurred sometime within the few days prior to her *437 death, including a small abrasion on the forehead, a bruise on the back of one thigh, and a fractured sternum. Changes caused by decomposition of Straumanis's body made determination of the existence of any sexual assault difficult. Although Straumanis's anus was dilated, there was no evidence of injury to the perianal skin or distal rectum. Testing revealed that Straumanis had a blood alcohol content of 0.37.

The State charged Dennis by information with one count of first-degree murder with the use of a deadly weapon. The State subsequently filed a notice of intent to seek the death penalty, alleging four aggravating circumstances: that Dennis subjected Straumanis to nonconsensual sexual penetration immediately before, during or immediately after the commission of the murder, and that Dennis had been previously convicted of three separate felonies involving the use or threat of violence to the person of another--a 1979 conviction for second-degree assault, a 1984 conviction for second-degree assault, and a 1984 conviction for second-degree arson.

Counsel were appointed to represent Dennis and arranged to have a psychiatrist conduct a competency evaluation. The psychiatrist who conducted the evaluation concluded that, although Dennis was clinically depressed, he was competent to stand trial and assist in his defense.

On April 16, 1999, Dennis entered a guilty plea to first-degree murder with the use of a deadly weapon pursuant to a written plea agreement. The district court thoroughly canvassed Dennis, who stated his desire to plead guilty though he faced a possible death penalty. Dennis explained that he had been in prison twice before and did not consider living in prison to be "living at all." He did not want to "waste away" in prison for the remainder of his life, and would rather "get it over faster than that." Ultimately, the court accepted Dennis's plea, finding that Dennis was competent to enter a plea and that his plea was knowing and voluntary.

On July 19 and 20, 1999, a penalty hearing was conducted before a three-judge panel of the district court. The State presented evidence relating to the facts and circumstances of Straumanis's death, including Dennis's own statements regarding the crime and evidence in support of the alleged aggravating circumstances. The panel was also

informed that Dennis had a total of nine prior convictions: the three prior felony convictions alleged as aggravators, for which he served approximately two and one-half years in prison, and another older felony conviction for possession of a controlled substance, for which he served two years in prison. Dennis also had five prior misdemeanor convictions.

Dennis agreed to permit counsel to argue for a sentence less than death and submit a sentencing memorandum along with medical, psychiatric and jail records. [FN3] However, he expressed to the panel that he did not want to live in prison for the rest of his life, and he declined to present any additional evidence in mitigation or make any further statement in allocution.

FN3. The State stipulated to the admission of the memorandum and documents offered by the defense to show mitigation.

Dennis's records together with the panel's questioning of Dennis show that Dennis has a lengthy history of alcohol and substance abuse as well as suicide attempts. He first attempted suicide in 1965 and was hospitalized. However, it does not appear that Dennis was diagnosed with or treated for any mental health disorders until thirty years later. In 1995, he began a series of contacts with mental health professionals and was diagnosed with various disorders--primarily, a chronic depressive disorder. [FN4] The same records *438 show that Dennis was treated for his problems at various facilities by means of prescription drugs and therapy. Although he enjoyed periods of improved well being, he repeatedly discontinued his medications, declined further treatment and continued to consume alcohol against his doctors' advice.

FN4. Beginning in 1995, Dennis began a series of hospitalizations and outpatient treatments for various problems including Hepatitis C, alcohol abuse, recurrent depressive disorder, suicidal ideation and attempts, antisocial personality disorder, post-traumatic stress disorder attributed to abuse Dennis reported suffering as a child, bipolar disorder, and anger management problems. In 1995, Dennis also reported having audio hallucinations and was diagnosed with having a substance-induced psychotic disorder at the time of one admission for hospitalization. When receiving medical treatment subsequent to 1995, however, Dennis denied having any hallucinations, and it does not appear that Dennis's care providers noted any indications to the contrary.

Included among the medical records submitted were Veteran's Administration ("VA") records, which indicate that two months prior to killing Straumanis, Dennis was admitted to the VA Hospital in Reno when he reported to medical staff that he had stopped taking his medications and was trying to drink himself to death. He also reported picking up a girl the previous night, taking her to a motel, and having thoughts of killing her. At the time he was admitted, Dennis exhibited bizarre behavior, talking and answering to himself. However, he was discharged from the hospital after eight days. Reports from follow-up visits with VA medical personnel in February and on March 2, 1999, show no indication of any alarming behavior by Dennis and further show that he denied wanting to harm himself or others.

Counsel argued against a death sentence and alleged as mitigating factors that the murder was committed while Dennis was under the influence of extreme mental or emotional disturbance, *see* NRS 200.035(2), as well as numerous other circumstances, *see* NRS 200.035(7). The panel found that Dennis made a knowing and voluntary waiver of the right to present further mitigating evidence or make any further statement in allocution.

After hearing argument, the panel found that three of the four alleged aggravators were established: the three prior felony convictions. The panel also found two mitigating circumstances: Dennis was under the influence of alcohol when he killed Straumanis, and he suffers from mental illness. The panel concluded that the mitigating circumstances did not outweigh the aggravating circumstances and returned a verdict of death. Dennis timely appealed.

DISCUSSION

Dennis argues only that his sentence of death is excessive. However, where a sentence of death has been imposed, NRS 177.055(2) requires this court to review the record and consider in addition to any errors enumerated on appeal:

- (b) Whether the evidence supports the finding of an aggravating circumstance or circumstances;
- (c) Whether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor; and
- (d) Whether the sentence of death is excessive, considering both the crime and the defendant.

We address each of these considerations in turn.

Whether the evidence supports the three-judge panel's finding of aggravating circumstances

[1] The panel found that the State had proved three aggravating circumstances: three prior felony convictions involving the use or threat of violence to the person of another. See NRS 200.033(2)(b).

The record shows that in support of the 1979 felony assault conviction alleged as an aggravator, the State presented police reports, a certified copy of the judgment of conviction from the State of Washington, and testimony from the assault victim. This evidence showed that in December 1978, Dennis became intoxicated, argued with his girlfriend over his unemployment and threatened to kill her. He then held her up against a door and put a knife to her neck. During the altercation, he ripped the knife blade through her hand, saying, "[H]urts, don't it?" Although she managed to escape, the attack left her hand scarred. Police subsequently arrested Dennis at a local barroom frequented by him. He was thereafter convicted of second-degree felony assault and sentenced to a ten-year term of imprisonment, suspended for a five-year term of probation.

In support of the 1984 felony assault and felony arson convictions, each alleged as aggravators, the State presented police reports, certified copies of the judgments of conviction from the State of Washington, and testimony from victims. This evidence showed *439 that in December 1983, Dennis had a personal relationship with a woman, "Bonnie," whose daughter, "Lana," was sixteen years old. Lana and Dennis had been involved in a dispute stemming from an incident when Dennis went on a "rampage" and kicked in the door of Bonnie's home while Lana and her siblings were present. A couple of days after this incident, Lana was at the home of a family friend. As the two were watching television and eating dinner, Dennis lit the home on fire. When Lana became aware of the fire, she contacted police.

When confronted by police responding to the arson report, Dennis acted as if he did not know what had precipitated a police response. He then swung a knife at an officer. Even after surrounded by five officers, he refused to drop the knife, saying that he wanted to make a point. He made menacing gestures with the knife toward each of the responding officers and threatened to stab anybody who tried to take his knife. He challenged the officers to shoot him and challenged a canine officer to let his dog loose so that Dennis could stab the dog. Dennis then lunged and

thrust his knife at the canine officer, and was shot. Notably, although Dennis smelled of alcohol at the time of his arrest, the arresting officer reported there was no indication that Dennis was intoxicated or not in control of himself at the time of the assault. Dennis was convicted of one count each of second-degree assault and second-degree arson. He was sentenced to ten years of imprisonment on each count, to be served concurrently with each other, and consecutively to the sentence for the 1979 assault conviction, for which his probation was revoked.

We conclude that this evidence is sufficient to prove each of the three aggravating circumstances found by the panel. See generally *Parker v. State*, 109 Nev. 383, 393, 849 P.2d 1062, 1068 (1993).

Whether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor

[2] The panel considered evidence of the crime, the background and characteristics of Dennis, and both the aggravating and mitigating circumstances. The panel then concluded that the aggravating circumstances outweighed the mitigating and a death sentence was appropriate. Our review of the record reveals no evidence that the panel imposed the death sentence under the influence of passion, prejudice or any other arbitrary factor.

Whether the sentence of death is excessive

Dennis contends that his sentence of death is excessive. He asks this court to compare his background, character, crime, and the mitigating and aggravating circumstances found in his case to those of defendants in other first-degree murder cases where we have either affirmed the judgment of death or determined the death penalty to be excessive. He contends that under this comparative review, his death sentence must be vacated because the relevant sentencing factors in his case are most similar to those in two cases where we concluded that the death penalties were excessive: *Haynes v. State*, 103 Nev. 309, 739 P.2d 497 (1987), and *Chambers v. State*, 113 Nev. 974, 944 P.2d 805 (1997).

The State argues that the comparative review sought by Dennis is unnecessary and suggests that such a review is tantamount to proportionality review, which was formerly required by NRS 177.055(2)(d), but was abolished by our Legislature in 1985. See 1985 Nev. Stat., ch. 527, § 1, at 1597.

Thus, we must determine whether the comparative review of death penalty cases has any proper role in our excessiveness analysis under NRS 177.055(2)(d).

From 1977 through 1985, NRS 177.055(2)(d) required that on appeal from a judgment of death, this court must consider "[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases in this state, considering both the crime and the defendant." 1977 Nev. Stat., ch. 585, § 10, at 1545; 1985 Nev. Stat., ch. 527, § 1, at 1597. Proportionality review required "that we compare all [similar] capital cases [in this state], as well as appealed murder cases in which the death penalty was sought but not imposed, and set aside those *440 death sentences which appear comparatively disproportionate to the offense and the background and characteristics of the offender." *Harvey v. State*, 100 Nev. 340, 342, 682 P.2d 1384, 1385 (1984).

However, in 1984, the United States Supreme Court decided *Pulley v. Harris*, 465 U.S. 37, 43-44, 50-51, 104 S.Ct. 871, 79 L.Ed.2d 29 (1984), holding that the Eighth Amendment to the United States Constitution [FN5] does not require a proportionality review of death sentences, *i.e.*, an inquiry into whether the death penalty is unacceptable in a particular case because it is disproportionate to the punishment imposed on others similarly situated. The following year, the Nevada Legislature amended NRS 177.055(2)(d) to repeal the proportionality review requirement. See 1985 Nev. Stat., ch. 527, § 1, at 1597. In its current form, NRS 177.055(2)(d) provides only that this court must consider on appeal from a judgment of death "[w]hether the sentence of death is excessive, considering both the crime and the defendant."

FN5. U.S. Const. amend. VIII.

[3] We have recognized that pursuant to the 1985 amendment to NRS 177.055(2)(d), this court no longer conducts proportionality review of death sentences. See, *e.g.*, *Thomas v. State*, 114 Nev. 1127, 1148, 967 P.2d 1111, 1125 (1998), *cert. denied*, 528 U.S. 830, 120 S.Ct. 85, 145 L.Ed.2d 72 (1999); *Guy v. State*, 108 Nev. 770, 784, 839 P.2d 578, 587 (1992). Instead, we review a death penalty for excessiveness considering only the crime and the defendant at hand. *Guy*, 108 Nev. at 784, 839 P.2d at 587.

In dispensing with proportionality review, we have recognized that penalties imposed in other similar

cases in this state are "irrelevant" to the excessiveness analysis now required by NRS 177.055(2)(d). See *id.* Nonetheless, we have not entirely abandoned comparative review as part of that analysis. As noted by Dennis, in *Chambers*, 113 Nev. at 984-85, 944 P.2d at 811-12, we considered whether the imposition of a death sentence was warranted based upon comparisons between Chambers and his crime and defendants and crimes in other cases in which we have reviewed judgments of death. Specifically, we compared and found that the circumstances of the crime and defendant in *Chambers* were similar to those in two cases where we had determined the death penalty was excessive: *Haynes* and *Biondi v. State*, 101 Nev. 252, 699 P.2d 1062 (1985). *Chambers*, 113 Nev. at 985, 944 P.2d at 811. We also compared "the circumstances of the murder and the defendant in [*Chambers*] with the circumstances in other cases in which this court has affirmed the death penalty." *Id.* at 984, 944 P.2d at 811. After considering the crime and defendant in *Chambers*, and in light of our comparative review, we ultimately concluded that the sentence of death was excessive. *Id.* at 984-85, 944 P.2d 805.

[4] Nonetheless, *Chambers* does not stand for the proposition that this court will conduct proportionality review of death sentences as part of the excessiveness analysis despite the Legislature's abolishment of such review. The fact that others guilty of first-degree murder may have received greater or lesser penalties does not mean that a defendant whose crime, background and characteristics are similar is entitled to receive a like sentence. However, as apparent in *Chambers*, our determinations regarding excessiveness of the death sentences of similarly situated defendants may serve as a frame of reference for determining the crucial issue in the excessiveness analysis: are the crime and defendant before us on appeal of the class or kind that warrants the imposition of death? See NRS 177.055(2)(d) (court must consider whether sentence of death on appeal is excessive, "considering both the crime and the defendant"). This inquiry may involve a consideration of whether various objective factors, which we have previously considered relevant to whether the death penalty is excessive in other cases, are present and suggest the death sentence under consideration is excessive.

We conclude that, even using as a frame of reference the factors considered relevant to excessiveness in *Chambers* and *Haynes*, the *441 cases upon which Dennis relies, the death penalty is not excessive here.

In *Haynes*, we relied on several objective factors to determine that the death sentence was excessive, i.e., the killing in that case was " 'crazy' " and "motiveless"; the defendant, Haynes, was a "mentally disturbed person lashing out irrationally, and probably delusionally, and striking a person he did not know and probably had never seen before"; and the single aggravating circumstance, a prior felony conviction for armed robbery, was fifteen years old at the time of the crime and committed by Haynes when he was eighteen years old. 103 Nev. at 319, 739 P.2d at 503. We concluded that the case was comparable to *Biondi v. State*, 101 Nev. 252, 699 P.2d 1062 (1985), where the defendant killed a man in a barroom confrontation among strangers in an emotionally charged atmosphere, and where the only aggravating circumstance was a prior conviction for armed robbery. [FN6] *Haynes*, 103 Nev. at 319, 739 P.2d at 503. We noted that in *Biondi*, we had reduced the death sentence to life without the possibility of parole. [FN7] *Id.* We finally concluded that Haynes did not deserve the death penalty. *Id.*

FN6. Although *Haynes* was decided after the Legislature abolished proportionality review, we nevertheless conducted such a review because the crime in that case was committed two days before proportionality review was abolished. *Haynes*, 103 Nev. at 319 n. 5, 739 P.2d at 504 n. 5.

FN7. In *Biondi*, we vacated the death sentence of the defendant because the penalty was disproportionate to sentences received in similar cases, including the codefendant's case. *Biondi*, 101 Nev. at 258-60, 699 P.2d at 1066-67.

As noted previously, we likewise determined the sentence of death was excessive in *Chambers*, after concluding the case was comparable to *Haynes* and *Biondi*. *Chambers*, 113 Nev. at 984-85, 944 P.2d at 811-12. In doing so, we relied on several objective factors, including that Chambers murdered the victim in a drunken state, which indicated no advanced planning, during an emotionally charged confrontation in which Chambers was wounded and his professional tools were being ruined. *Id.* at 985, 944 P.2d at 811-12. We further noted that the only valid aggravating factor in *Chambers*, prior felony convictions for robberies, "referred to crimes that occurred eighteen years before the verdict in question, when Chambers was eighteen years old," which "hardly shows a pattern of violence sufficient to justify the death penalty." *Id.* at 984-85, 944 P.2d at

811.

[5] Considering Dennis and his crime, we conclude that the objective factors relied on in *Haynes* and *Chambers* do not indicate the death penalty is excessive here. Dennis deliberately strangled Straumanis over the course of five to ten minutes and made efforts to assure her death. Unlike the defendants in *Haynes* and *Chambers*, evidence here shows a high degree of callousness and premeditation by Dennis. Dennis disputes this on appeal, suggesting that the evidence obtained during his interview with RPD should be discounted because much of what he said during his interview was "puffing" and "macho-image making," designed to make detectives take seriously his desire to be put to death. [FN8] However, Dennis's account of the crime is not inconsistent with the physical evidence. No evidence indicates that Dennis exaggerated the willful, premeditated and deliberate nature of the crime or that his callous indifference toward Straumanis was contrived. No evidence shows that the killing was the result of uncontrollable, irrational or delusional impulses or occurred during an emotionally charged physical confrontation. Accordingly, neither Dennis's mental illness nor his being under the influence of alcohol at the time of the crime renders his death penalty excessive. *Cf. DePasquale v. State*, 106 Nev. 843, 803 P.2d 218 (1990) (death sentence not excessive although defendant had history of mental illness); *Geary v. State*, 115 Nev. 79, 977 P.2d 344 (1999) (death sentence not excessive where defendant was in drunken rage when he killed victim), *cert. denied*, 529 U.S. 1090, 120 S.Ct. 1726, 146 L.Ed.2d 646 (2000).

FN8. In support of this, he points to his statements during the interview showing that at the time of the interview, he was suffering the effects of alcohol withdrawal, and his statements exaggerating his prior military experience and falsely indicating that he had killed others before Straumanis.

*442 Further, in this case, the prior felony convictions found as aggravating circumstances demonstrate that Dennis is a dangerous and violent man. There is no indication that these crimes were committed during any physical confrontation or that Dennis was irrational, delusional or unable to control his actions at the time. One of the aggravating prior felonies was committed twenty-one years, and the others, sixteen years, before Straumanis's murder. Unlike the single valid prior felony aggravating

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, 1030 Holcomb Avenue, Reno, NV 89502, and that on this date I caused the foregoing document to be delivered to all parties to this action by

_____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada.

_____ personal delivery

_____ Facsimile (FAX)

_____ Federal Express or other overnight delivery

X Reno/Carson Messenger Service

addressed as follows:

RICHARD GAMMICK
Washoe County District Attorney's Office
75 Court Street
P. O. Box 30083
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ATTN: Appellate Division

BRIAN SANDOVAL
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DATED this 16th day of September, 2003.



KARLA K. BUTKO, ESQ.

